

2003

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
FIFTY-EIGHTH LEGISLATURE
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Code Reviser

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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 2003 regular session to be July 27, 2003 (midnight July 26th).
- (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 2003 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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CHAPTER 1

[Initiative 776]

LICENSE TAB FEES

AN ACT Relating to limiting government-imposed charges on motor vehicles; amending RCW 46.16.0621, 46.16.070, 35.58.273, and 81.104.160; creating new sections; and repealing RCW 35.58.274, 35.58.275, 35.58.276, 35.58.277, 35.58.278, 82.44.041, 82.44.110, 82.44.150, and 82.80.020.

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

POLICIES AND PURPOSES

NEW SECTION. Sec. 1. This measure would require license tab fees to be \$30 per year for motor vehicles and light trucks and would repeal certain government-imposed charges, including excise taxes and fees, levied on motor vehicles. Politicians promised "\$30 license tabs are here to stay" and promised any increases in vehicle-related taxes, fees and surcharges would be put to a public vote. Politicians should keep their promises. As long as taxpayers must pay incredibly high sales taxes when buying motor vehicles (meaning state and local governments receive huge windfalls of sales tax revenue from these transactions), the people want license tab fees to not exceed the promised \$30 per year. Without this follow-up measure, "tab creep" will continue until license tab fees are once again obscenely expensive, as they were prior to Initiative 695. The people want a public vote on any increases in vehicle-related taxes, fees and surcharges to ensure increased accountability. Voters will require more cost-effective use of existing revenues and fundamental reforms before approving higher charges on motor vehicles (such changes may remove the need for any increases). Also, dramatic changes to transportation plans and programs previously presented to voters must be resubmitted. This measure provides a strong directive to all taxing districts to obtain voter approval before imposing taxes, fees and surcharges on motor vehicles. However, if the legislature ignores this clear message, a referendum will be filed to protect the voters' rights. Politicians should just do the right thing and keep their promises.

REQUIRING LICENSE TAB FEES TO NOT EXCEED \$30 PER YEAR FOR MOTOR VEHICLES

Sec. 2. RCW 46.16.0621 and 2000 1st sp.s. c 1 s 1 are each amended to read as follows:

(1) License tab fees (~~(shall be thirty dollars)~~) are required to 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.

REQUIRING LICENSE TAB FEES TO NOT EXCEED \$30 PER YEAR FOR LIGHT TRUCKS (HEAVY TRUCKS AND TRAILERS WILL

CONTINUE TO BE BASED ON GROSS WEIGHT AT THE RATES LISTED BELOW)

Sec. 3. RCW 46.16.070 and 1994 c 262 s 8 are each amended to read as follows:

(1) In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the ~~((excise tax prescribed in chapter 82.44 RCW and the))~~ mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each truck, motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight thereof pursuant to the provisions of chapter 46.44 RCW, the following licensing fees by such gross weight:

DECLARED GROSS WEIGHT	SCHEDULE A	SCHEDULE B
4,000 lbs.	\$ ((37.00)) <u>30.00</u>	\$ ((37.00)) <u>30.00</u>
6,000 lbs.	\$ ((44.00)) <u>30.00</u>	\$ ((44.00)) <u>30.00</u>
8,000 lbs.	\$ ((55.00)) <u>30.00</u>	\$ ((55.00)) <u>30.00</u>
10,000 lbs.	\$ 62.00	\$ 62.00
12,000 lbs.	\$ 72.00	\$ 72.00
14,000 lbs.	\$ 82.00	\$ 82.00
16,000 lbs.	\$ 92.00	\$ 92.00
18,000 lbs.	\$ 137.00	\$ 137.00
20,000 lbs.	\$ 152.00	\$ 152.00
22,000 lbs.	\$ 164.00	\$ 164.00
24,000 lbs.	\$ 177.00	\$ 177.00
26,000 lbs.	\$ 187.00	\$ 187.00
28,000 lbs.	\$ 220.00	\$ 220.00
30,000 lbs.	\$ 253.00	\$ 253.00
32,000 lbs.	\$ 304.00	\$ 304.00
34,000 lbs.	\$ 323.00	\$ 323.00
36,000 lbs.	\$ 350.00	\$ 350.00
38,000 lbs.	\$ 384.00	\$ 384.00
40,000 lbs.	\$ 439.00	\$ 439.00
42,000 lbs.	\$ 456.00	\$ 546.00
44,000 lbs.	\$ 466.00	\$ 556.00
46,000 lbs.	\$ 501.00	\$ 591.00
48,000 lbs.	\$ 522.00	\$ 612.00
50,000 lbs.	\$ 566.00	\$ 656.00
52,000 lbs.	\$ 595.00	\$ 685.00
54,000 lbs.	\$ 642.00	\$ 732.00
56,000 lbs.	\$ 677.00	\$ 767.00
58,000 lbs.	\$ 704.00	\$ 794.00
60,000 lbs.	\$ 750.00	\$ 840.00
62,000 lbs.	\$ 804.00	\$ 894.00
64,000 lbs.	\$ 822.00	\$ 912.00
66,000 lbs.	\$ 915.00	\$ 1,005.00
68,000 lbs.	\$ 954.00	\$ 1,044.00
70,000 lbs.	\$ 1,027.00	\$ 1,117.00
72,000 lbs.	\$ 1,098.00	\$ 1,188.00
74,000 lbs.	\$ 1,193.00	\$ 1,283.00
76,000 lbs.	\$ 1,289.00	\$ 1,379.00

78,000 lbs.	\$ 1,407.00	\$ 1,497.00
80,000 lbs.	\$ 1,518.00	\$ 1,608.00
82,000 lbs.	\$ 1,623.00	\$ 1,713.00
84,000 lbs.	\$ 1,728.00	\$ 1,818.00
86,000 lbs.	\$ 1,833.00	\$ 1,923.00
88,000 lbs.	\$ 1,938.00	\$ 2,028.00
90,000 lbs.	\$ 2,043.00	\$ 2,133.00
92,000 lbs.	\$ 2,148.00	\$ 2,238.00
94,000 lbs.	\$ 2,253.00	\$ 2,343.00
96,000 lbs.	\$ 2,358.00	\$ 2,448.00
98,000 lbs.	\$ 2,463.00	\$ 2,553.00
100,000 lbs.	\$ 2,568.00	\$ 2,658.00
102,000 lbs.	\$ 2,673.00	\$ 2,763.00
104,000 lbs.	\$ 2,778.00	\$ 2,868.00
105,500 lbs.	\$ 2,883.00	\$ 2,973.00

Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B applies to vehicles that tow trailers and are not covered under Schedule A.

Every truck, motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle or unless the vehicle is used only for the purpose of transporting any well drilling machine, air compressor, rock crusher, conveyor, hoist, donkey engine, cook house, tool house, bunk house, or similar machine or structure attached to or made a part of such vehicle.

The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

(2) The proceeds from the fees collected under subsection (1) of this section shall be distributed in accordance with RCW 46.68.035.

REPEALING THE REMAINING MOTOR VEHICLE EXCISE TAX WHICH THE LEGISLATURE FAILED TO FULLY REPEAL

Sec. 4. RCW 35.58.273 and 1998 c 321 s 25 are each amended to read as follows:

(1) ~~((A municipality is authorized to levy and collect a special excise tax not exceeding .725 percent on the value, as determined under chapter 82.44 RCW, of every motor vehicle owned by a resident of such municipality for the privilege of using such motor vehicle provided that in no event shall the tax be less than one dollar and, subject to RCW 82.44.150 (3) and (4), the amount of such tax shall be credited against the amount of the excise tax levied by the state under RCW 82.44.020(1).))~~ Before utilization of any ~~((excise))~~ tax moneys

collected under authorization of this section for acquisition of right of way or construction of a mass transit facility on a separate right of way the municipality shall adopt rules affording the public an opportunity for "corridor public hearings" and "design public hearings" as herein defined, which rule shall provide in detail the procedures necessary for public participation in the following instances: (a) Prior to adoption of location and design plans having a substantial social, economic or environmental effect upon the locality upon which they are to be constructed or (b) on such mass rapid transit systems operating on a separate right of way whenever a substantial change is proposed relating to location or design in the adopted plan. In adopting rules the municipality shall adhere to the provisions of the Administrative Procedure Act.

(2) A "corridor public hearing" is a public hearing that: (a) Is held before the municipality is committed to a specific mass transit route proposal, and before a route location is established; (b) is held to afford an opportunity for participation by those interested in the determination of the need for, and the location of, the mass rapid transit system; (c) provides a public forum that affords a full opportunity for presenting views on the mass rapid transit system route location, and the social, economic and environmental effects on that location and alternate locations: PROVIDED, That such hearing shall not be deemed to be necessary before adoption of an overall mass rapid transit system plan by a vote of the electorate of the municipality.

(3) A "design public hearing" is a public hearing that: (a) Is held after the location is established but before the design is adopted; and (b) is held to afford an opportunity for participation by those interested in the determination of major design features of the mass rapid transit system; and (c) provides a public forum to afford a full opportunity for presenting views on the mass rapid transit system design, and the social, economic, environmental effects of that design and alternate designs.

(4) A municipality (~~imposing a tax under subsection (1) of this section~~) may (~~also~~) impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the municipality that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 1.944 percent. (~~The rate of tax imposed under this subsection shall bear the same ratio to the 1.944 percent rate authorized that the rate imposed under subsection (1) of this section bears to the rate authorized under subsection (1) of this section.~~) The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The tax imposed under this section shall be deducted from the amount of tax otherwise due under RCW 82.08.020(2). The revenue collected under this (~~subsection~~) section shall be collected and distributed in the same manner as (~~special~~ excise) sales and use taxes under (~~subsection (1) of this section~~) chapter 82.14 RCW.

Any motor vehicle (special) excise tax previously imposed under the provisions of RCW 35.58.273 shall be repealed, terminated and expire on the effective date of this act.

NEW SECTION. Sec. 5. The following acts or parts of acts are each repealed:

(1) RCW 35.58.274 (Public transportation systems—Motor vehicles exempt from tax) and 1985 c 7 s 100 & 1969 ex.s. c 255 s 9;

(2) RCW 35.58.275 (Public transportation systems—Provisions of motor vehicle excise tax chapter applicable) and 1969 ex.s. c 255 s 10;

(3) RCW 35.58.276 (Public transportation systems—When tax due and payable—Collection) and 1971 ex.s. c 199 s 1 & 1969 ex.s. c 255 s 11;

(4) RCW 35.58.277 (Public transportation systems—Remittance of tax by county auditor) and 1979 c 158 s 91 & 1969 ex.s. c 255 s 12;

(5) RCW 35.58.278 (Public transportation systems—Distribution of tax) and 1975 1st ex.s. c 270 s 2, 1974 ex.s. c 54 s 1, & 1969 ex.s. c 255 s 13;

(6) RCW 82.44.041 (Valuation of vehicles) and 1998 c 321 s 4 & 1990 c 42 s 303;

(7) RCW 82.44.110 (Disposition of revenue) and 1998 c 321 s 5, 1997 c 338 s 68, & 1997 c 149 s 911; and

(8) RCW 82.44.150 (Apportionment and distribution of motor vehicle excise taxes generally) and 1999 c 94 s 30, 1998 c 321 s 6, 1995 2nd sp.s. c 14 s 538, 1994 c 241 s 1, & 1993 c 491 s 2.

REPEALING THE LOCAL MOTOR VEHICLE EXCISE TAX

Sec. 6. RCW 81.104.160 and 1998 c 321 s 35 are each amended to read as follows:

~~((1) Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters, and if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding eighty one hundredths of one percent on the value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing high capacity transportation service. In any county imposing a motor vehicle excise tax surcharge pursuant to RCW 81.100.060, the maximum tax rate under this section shall be reduced to a rate equal to eighty one hundredths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed pursuant to RCW 81.100.060. This rate shall not apply to vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.085, or 46.16.090.~~

~~((2)) An agency ((imposing a tax under subsection (1) of this section)) may ((also)) impose a sales and use tax solely for the purpose of providing high capacity transportation service, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the agency's jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 2.172 percent. ((The rate of tax imposed under this subsection shall bear the same ratio to the 2.172 percent rate authorized that the rate imposed under subsection (1) of this section bears to the rate authorized under subsection (1) of this section.)) The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. ((The revenue collected under this subsection shall be used in the same manner as excise taxes under subsection (1) of this section.))~~

Any motor vehicle excise tax previously imposed under the provisions of RCW 81.104.160(1) shall be repealed, terminated and expire on the effective date of this act.

LEGISLATIVE INTENT RELATING TO OUTSTANDING BONDS

NEW SECTION. Sec. 7. If the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, the people expect transit agencies to retire these bonds using reserve funds including accrued interest, sale of property or equipment, new voter approved tax revenues, or any combination of these sources of revenue. Taxing districts should abstain from further bond sales for any purpose relating to light rail until voters decide this measure. The people encourage transit agencies to put another tax revenue measure before voters if they want to continue with a light rail system dramatically changed from that previously represented to and approved by voters.

REPEALING THE LOCAL OPTION VEHICLE LICENSE FEE

NEW SECTION. Sec. 8. RCW 82.80.020 (Vehicle license fee—Exemptions—Limitations) and 2001 c 64 s 15, 2000 c 103 s 20, 1998 c 281 s 1, 1996 c 139 s 4, 1993 c 60 s 1, 1991 c 318 s 13, & 1990 c 42 s 206 are each repealed.

CONSTRUCTION CLAUSE

NEW SECTION. Sec. 9. The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

SEVERABILITY CLAUSE

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. If the repeal of taxes in section 6 of this act is judicially held to impair any contract in existence as of the effective date of this act, the repeal shall apply to any other contract, including novation, renewal, or refunding (in the case of bond contract).

LEGISLATIVE INTENT

NEW SECTION. Sec. 11. The people have made clear through the passage of numerous initiatives and referenda that taxes need to be reasonable and tax increases should always be a last resort. However, politicians throughout the state of Washington continue to ignore these repeated mandates.

The people expect politicians to keep their promises. The legislative intent of this measure is to ensure that they do.

Politicians are reminded:

(1) Washington voters want license tab fees to be \$30 per year for motor vehicles unless voters authorize higher vehicle-related charges at an election.

(2) All political power is vested in the people, as stated in Article I, section 1 of the Washington state Constitution.

(3) The first power reserved by the people is the initiative, as stated in Article II, section 1 of the Washington state Constitution.

(4) When voters approve initiatives, politicians have a moral, ethical, and constitutional obligation to fully implement them. When politicians ignore this obligation, they corrupt the term "public servant."

(5) Any attempt to violate the clear intent and spirit of this measure undermines the trust of the people in their government and will increase the likelihood of future tax limitation measures.

Originally filed in Office of Secretary of State January 7, 2002.

Approved by the People of the State of Washington in the General Election on November 5, 2002.

CHAPTER 2

[Initiative 790]

LAW ENFORCEMENT, FIRE FIGHTERS' RETIREMENT SYSTEM

AN ACT Relating to the law enforcement officers' and fire fighters' retirement system, plan 2; adding new sections to chapter 41.26 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. OVERVIEW. The law enforcement officers' and fire fighters' retirement system plan 2 is currently subject to policymaking by the legislature's joint committee on pension policy with ratification by the members of the legislature and is administered by the department of retirement systems.

Members of the plan have no direct input into the management of their retirement program. Forty-six other states currently have member representation in their pension management. This act is intended to give management of the retirement program to the people whose lives are directly affected by it and who provide loyal and valiant service to ensure the health, safety, and welfare of the citizens of the state of Washington.

NEW SECTION. Sec. 2. INTENT. It is the intent of this act to:

(1) Establish a board of trustees responsible for the adoption of actuarial standards to be applied to the plan;

(2) Provide for additional benefits for fire fighters and law enforcement officers subject to the cost limitations provided for in this act;

(3) Exercise fiduciary responsibility in the oversight of those pension management functions assigned to the board;

(4) Provide effective monitoring of the plan by providing an annual report to the legislature, to the members and beneficiaries of the plan, and to the public;

(5) Establish contribution rates for employees, employers, and the state of Washington that will guaranty viability of the plan, subject to the limitations provided for in this act;

(6) Provide for an annual budget and to pay costs from the trust, as part of the normal cost of the plan; and

(7) Enable the board of trustees to retain professional and technical advisors as necessary for the fulfillment of their statutory responsibilities.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this act unless the context clearly requires otherwise.

(1) "Member" or "beneficiary" means:

(a) Current and future law enforcement officers and fire fighters who are contributing to the plan;

(b) Retired employees or their named beneficiaries who receive benefits from the plan; and

(c) Separated vested members of the plan who are not currently receiving benefits.

(2) "Plan" means the law enforcement officers' and fire fighters' retirement system plan 2.

(3) "Actuary" means the actuary employed by the board of trustees.

(4) "State actuary" means the actuary employed by the department.

(5) "Board" means the board of trustees.

(6) "Board member" means a member of the board of trustees.

(7) "Department" means the department of retirement systems.

(8) "Minimum benefits" means those benefits provided for in chapter 41.26 RCW as of July 1, 2003.

(9) "Employer" means the same as under RCW 41.26.030(2)(b).

(10) "Enrolled actuary" means an actuary who is enrolled under the employee retirement income security act of 1974 (Subtitle C of Title III) and who is a member of the society of actuaries or the American academy of actuaries.

(11) "Increased benefit" means a benefit in addition to the minimum benefits.

(12) "Trust" means the assets of the plan.

(13) "Benefits" means the age or service or combination thereof required for retirement, the level of service and disability retirement benefits, survivorship benefits, payment options including a deferred retirement option plan, average final compensation, postretirement cost of living adjustments, including health care and the elements of compensation. Benefits shall not include the classifications of employment eligible to participate in the plan.

(14) "Actuarially sound" means the plan is sufficiently funded to meet its projected liabilities and to defray the reasonable expenses of its operation based upon commonly accepted, sound actuarial principles.

NEW SECTION. Sec. 4. BOARD OF TRUSTEES CREATED—SELECTION OF TRUSTEES—TERMS OF OFFICE—VACANCIES. (1) An eleven member board of trustees is hereby created.

(a) Three of the board members shall be active law enforcement officers who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, one board member shall be a retired law enforcement officer who is a member of the plan. The law enforcement officer board members shall be appointed by the governor from a list provided by a recognized statewide council whose membership consists exclusively of guilds, associations, and unions representing state and local government police officers, deputies, and sheriffs and excludes federal law enforcement officers.

(b) Three of the board members shall be active fire fighters who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, one board member shall be a retired fire fighter who is a member of the plan. The fire fighter board member shall be appointed by the governor from a list provided by a recognized statewide council, affiliated with an international association representing the interests of fire fighters.

(c) Three of the board members shall be representatives of employers and shall be appointed by the governor.

(d) One board member shall be a member of the house of representatives who is appointed by the governor based on the recommendation of the speaker of the house of representatives.

(e) One board member shall be a member of the senate who is appointed by the governor based on the recommendation of the majority leader of the senate.

(2) The initial law enforcement officer and fire fighter board members shall serve terms of six, four, and two years, respectively. Thereafter, law enforcement officer and fire fighter board members serve terms of six years. The remaining board members serve terms of four years. Board members may be reappointed to succeeding terms without limitation. Board members shall serve until their successors are appointed and seated.

(3) In the event of a vacancy on the board, the vacancy shall be filled in the same manner as prescribed for an initial appointment.

NEW SECTION. Sec. 5. POWERS OF THE BOARD OF TRUSTEES—MEETING PROCEDURES—QUORUM—JUDICIAL REVIEW—BUDGET OF THE BOARD OF TRUSTEES.

(1) The board of trustees have the following powers and duties and shall:

(a) Adopt actuarial tables, assumptions, and cost methodologies in consultation with an enrolled actuary retained by the board. The state actuary shall provide assistance when the board requests. The actuary retained by the board shall utilize the aggregate actuarial cost method, or other recognized actuarial cost method based on a level percentage of payroll, as that term is employed by the American academy of actuaries. In determining the reasonableness of actuarial valuations, assumptions, and cost methodologies, the actuary retained by the board shall provide a copy of all such calculations to the state actuary. If the two actuaries concur on the calculations, contributions shall be made as set forth in the report of the board's actuary. If the two actuaries cannot agree, they shall appoint a third, independent, enrolled actuary who shall review the calculations of the actuary retained by the board and the state actuary. Thereafter, contributions shall be based on the methodology most closely following that of the third actuary;

(b)(i) Provide for the design and implementation of increased benefits for members and beneficiaries of the plan, subject to the contribution limitations under section 6 of this act. An increased benefit may not be approved by the board until an actuarial cost of the benefit has been determined by the actuary and contribution rates adjusted as may be required to maintain the plan on a sound actuarial basis. Increased benefits as approved by the board shall be presented to the legislature on January 1st of each year. The increased benefits as approved by the board shall become effective within ninety days unless a bill is enacted in the next ensuing session of the legislature, by majority vote of each house of the legislature, repealing the action of the board;

(ii) As an alternative to the procedure in (b)(i) of this subsection, recommend to the legislature changes in the benefits for members and beneficiaries, without regard to the cost limitations in section 6(3) of this act. Benefits adopted in this manner shall have the same contractual protections as the minimum benefits in the plan. The recommendations of the board shall be presented to the legislature on January 1st of each year. These measures shall take precedence over all other measures in the legislature, except appropriations

bills, and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session;

(c) Retain professional and technical advisors necessary for the accomplishment of its duties. The cost of these services may be withdrawn from the trust;

(d) Consult with the department for the purpose of improving benefit administration and member services;

(e) Provide an annual report to the governor and the legislature setting forth the actuarial funding status of the plan and making recommendations for improvements in those aspects of retirement administration directed by the legislature or administered by the department;

(f) Establish uniform administrative rules and operating policies in the manner prescribed by law;

(g) Engage administrative staff and acquire office space independent of, or in conjunction with, the department. The department shall provide funding from its budget for these purposes;

(h) The board shall publish on an annual basis a schedule of increased benefits together with a summary of the minimum benefits as established by the legislature which shall constitute the official plan document; and

(i) Be the fiduciary of the plan and discharge the board's duties solely in the interest of the members and beneficiaries of the plan.

(2) Meetings of the board of trustees shall be conducted as follows:

(a) All board meetings are open to the public, preceded by timely public notice;

(b) All actions of the board shall be taken in open public session, except for those matters which may be considered in executive session as provided by law;

(c) The board shall retain minutes of each meeting setting forth the names of those board members present and absent, and their voting record on any voted issue; and

(d) The board may establish, with the assistance of the appropriate office of state government, an internet web site providing for interactive communication with state government, members and beneficiaries of the plan, and the public.

(3) A quorum of the board is six board members. All board actions require six concurring votes.

(4) The decisions of the board shall be made in good faith and are final, binding, and conclusive on all parties. The decisions of the board shall be subject to judicial review as provided by law.

(5) A law enforcement officers' and fire fighters' retirement system plan 2 expense fund is established for the purpose of defraying the expenses of the board. The board shall cause an annual budget to be prepared consistent with the requirements of chapter 43.88 RCW and shall draw the funding for the budget from the investment income of the trust. Board members shall be reimbursed for travel and education expenses as provided in RCW 43.03.050 and 43.03.060. The board shall make an annual report to the governor, legislature, and state auditor setting forth a summary of the costs and expenditures of the plan for the preceding year. The board shall also retain the services of an independent, certified public accountant who shall annually audit the expenses of the fund and whose report shall be included in the board's annual report.

NEW SECTION. Sec. 6. CONTRIBUTIONS. (1) The board of trustees shall establish contributions as set forth in this section. The cost of the minimum benefits as defined in this plan shall be funded on the following ratio:

Employee contributions 50%

Employer contributions 30%

State contributions 20%

(2) The minimum benefits shall constitute a contractual obligation of the state and the contributing employers and may not be reduced below the levels in effect on July 1, 2003. The state and the contributing employers shall maintain the minimum benefits on a sound actuarial basis in accordance with the actuarial standards adopted by the board.

(3) Increased benefits created as provided for in section 5 of this act are granted on a basis not to exceed the contributions provided for in this section. In addition to the contributions necessary to maintain the minimum benefits, for any increased benefits provided for by the board, the employee contribution shall not exceed fifty percent of the actuarial cost of the benefit. In no instance shall the employee cost exceed ten percent of covered payroll without the consent of a majority of the affected employees. Employer contributions shall not exceed thirty percent of the cost, but in no instance shall the employer contribution exceed six percent of covered payroll. State contributions shall not exceed twenty percent of the cost, but in no instance shall the state contribution exceed four percent of covered payroll. Employer contributions may not be increased above the maximum under this section without the consent of the governing body of the employer. State contributions may not be increased above the maximum provided for in this section without the consent of the legislature. In the event that the cost of maintaining the increased benefits on a sound actuarial basis exceeds the aggregate contributions provided for in this section, the board shall submit to the affected members of the plan the option of paying the increased costs or of having the increased benefits reduced to a level sufficient to be maintained by the aggregate contributions. The reduction of benefits in accordance with this section shall not be deemed a violation of the contractual rights of the members, provided that no reduction may result in benefits being lower than the level of the minimum benefits.

(4) The board shall manage the trust in a manner that maintains reasonable contributions and administrative costs. Providing additional benefits to members and beneficiaries is the board's priority.

(5) All earnings of the trust in excess of the actuarially assumed rate of investment return shall be used exclusively for additional benefits for members and beneficiaries.

NEW SECTION. Sec. 7. NONAPPLICABILITY OF JOINT COMMITTEE ON PENSION POLICY AND PENSION FUNDING COUNCIL. The joint committee on pension policy established in RCW 44.44.050, and the pension funding council created in RCW 41.45.100, shall have no applicability or authority over matters relating to this plan.

NEW SECTION. Sec. 8. ASSET MANAGEMENT. Assets of the plan shall be managed by the state investment board as provided by law.

NEW SECTION. Sec. 9. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the

act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. CAPTIONS NOT LAW. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 11. IMPLEMENTING LEGISLATION. The department of retirement systems and the office of the state actuary shall prepare and submit to the fiscal committees of the legislature by January 15, 2003, proposed legislation for implementing this act.

NEW SECTION. Sec. 12. CODIFICATION. Sections 1 through 9 of this act are each added to chapter 41.26 RCW.

NEW SECTION. Sec. 13. EFFECTIVE DATE. Except for section 11 of this act, the remainder of this act takes effect July 1, 2003.

Originally filed in Office of Secretary of State February 4, 2002.

Approved by the People of the State of Washington in the General Election on November 5, 2002.

CHAPTER 3

[Senate Bill 5001]

FELONY MURDER

AN ACT Relating to assault as a predicate for felony murder; amending RCW 9A.32.050; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that the 1975 legislature clearly and unambiguously stated that any felony, including assault, can be a predicate offense for felony murder. The intent was evident: Punish, under the applicable murder statutes, those who commit a homicide in the course and in furtherance of a felony. This legislature reaffirms that original intent and further intends to honor and reinforce the court's decisions over the past twenty-eight years interpreting "in furtherance of" as requiring the death to be sufficiently close in time and proximity to the predicate felony. The legislature does not agree with or accept the court's findings of legislative intent in *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, and reasserts that assault has always been and still remains a predicate offense for felony murder in the second degree.

To prevent a miscarriage of the legislature's original intent, the legislature finds in light of *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, that it is necessary to amend RCW 9A.32.050. This amendment is intended to be curative in nature. The legislature urges the supreme court to apply this interpretation retroactively to July 1, 1976.

Sec. 2. RCW 9A.32.050 and 1975-76 2nd ex.s. c 38 s 4 are each amended to read as follows:

(1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; or

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and

in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(b) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a class A felony.

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 by the Senate January 29, 2003.

Passed by the House February 5, 2003.

Approved by the Governor February 12, 2003.

Filed in Office of Secretary of State February 12, 2003.

CHAPTER 4

[Substitute House Bill 1832]

EMPLOYER EXPERIENCE RATING—RATE CLASS 16

AN ACT Relating to correcting rate class 16 in schedule B by amending RCW 50.29.025 and making no other changes; amending RCW 50.29.025; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 50.29.025 and 2000 c 2 s 4 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 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
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	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						
From	To	Rate 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	0.73	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
					<u>3.42</u>				
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 a contribution rate 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 a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(b) 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 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.

NEW SECTION. Sec. 2. Section 1 of this act applies to rate years beginning on or after January 1, 2003.

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 by the House February 24, 2003.

Passed by the Senate March 6, 2003.

Approved by the Governor March 12, 2003.

Filed in Office of Secretary of State March 12, 2003.

CHAPTER 5

[Engrossed House Bill 1977]

TAXATION—SERVICES

AN ACT Relating to clarifying the intentions of Senate Bill No. 6835, chapter 367, Laws of 2002; amending RCW 82.12.010, 82.12.020, 82.12.0254, 82.12.0255, 82.12.02565, 82.12.02567, 82.12.0259, 82.12.0277, 82.12.0279, 82.12.0315, 82.12.02595, 82.12.810, 82.12.820, 82.12.840, 82.12.890, 82.12.900, and 82.12.0251; adding a new section to chapter 82.12 RCW; creating a new section; repealing RCW 82.12.0252; and declaring an emergency.

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

Sec. 1. RCW 82.12.010 and 2002 c 367 s 3 are each amended to read as follows:

For the purposes of this chapter:

(1)(a) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. The term includes the amount of any freight, delivery, or other like transportation charge paid or given by the purchaser to the seller with respect to the purchase of such article. The term also includes, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department of revenue may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are

temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the retail selling price, as defined in RCW 82.08.010, of such article if but for the use of the direct pay permit the transaction would have been subject to sales tax;

(2) "Value of the service used" means the consideration, whether money, credit, rights, or other property, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department of revenue may prescribe;

(3) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state; and

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(4) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(5) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

(6) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes

imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (6), the use of the property shall be deemed to be by such consumer.

Sec. 2. RCW 82.12.020 and 2002 c 367 s 4 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer: (a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7); or (b) any canned software, regardless of the method of delivery, but excluding canned software that is either provided free of charge or is provided for temporary use in viewing information, or both.

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a) and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property or service taxable under RCW 82.04.050(2)(a) or (3)(a) purchased at retail or acquired by lease, gift, or bailment if the sale to, or the use by, the present user or his bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his bailor or donor.

(4) Except as provided in ((RCW 82.12.0252)) this section, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters. If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor; or in respect to the use of property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use; or in respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961, the tax imposed by this chapter does not apply.

~~((4))~~ (5) The tax shall be levied and collected in an amount equal to the value of the article used or value of the service used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020.

Sec. 3. RCW 82.12.0254 and 1998 c 311 s 7 are each amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of any airplane, locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or watercraft(~~(, and)~~) in the course of repairing, cleaning, altering, or improving the same; also the use of labor and services rendered in respect to such repairing, cleaning, altering, or improving.

(2) The provisions of this chapter shall not apply in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department of revenue shall adopt: PROVIDED, That under circumstances determined to be justifiable by the department of revenue a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein, shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state(~~(, and)~~).

(3) The provisions of this chapter shall not apply in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder, in the course of repairing, cleaning, altering, or improving the same; also the use of labor and services rendered in respect to such repairing, cleaning, altering, or improving.

Sec. 4. RCW 82.12.0255 and 1980 c 37 s 55 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property or service which the state is prohibited from

taxing under the Constitution of the state or under the Constitution or laws of the United States.

Sec. 5. RCW 82.12.02565 and 1999 c 211 s 6 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation ((ø)), to the use by a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

Sec. 6. RCW 82.12.02567 and 2001 c 213 s 2 are each amended to read as follows:

(1) The provisions of this chapter shall not apply with respect to machinery and equipment used directly in generating not less than two hundred watts of electricity using wind, sun, or landfill gas as the principal source of power, or to the use of labor and services rendered in respect to installing such machinery and equipment.

(2) The definitions in RCW 82.08.02567 apply to this section.

(3) This section expires June 30, 2009.

Sec. 7. RCW 82.12.0259 and 1980 c 37 s 59 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of tangible personal property or the use of services defined in RCW 82.04.050(2)(a) by corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same.

Sec. 8. RCW 82.12.0277 and 2001 c 75 s 2 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of insulin; prosthetic devices and the components thereof; dental appliances, devices, restorations, and substitutes, and the components thereof, including but not limited to full and partial dentures, crowns, inlays, fillings, braces, and retainers; orthotic devices prescribed for an individual by a person licensed under chapters 18.22, 18.25, 18.57, or 18.71 RCW; hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW, and the components thereof; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. In addition, the provisions of this chapter shall not apply in respect to the use of labor and

services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under this section.

Sec. 9. RCW 82.12.0279 and 1980 c 37 s 77 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state (~~and~~), in respect to the use of tangible personal property which becomes a component part of any such ferry vessel, and in respect to the use of labor and services rendered in respect to improving such ferry vessels.

Sec. 10. RCW 82.12.0315 and 1995 2nd sp.s. c 5 s 2 are each amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state; and

(c) Production services that are within the scope of RCW 82.04.050(2)(a) and are sold to a motion picture or video production business.

(2) As used in this section, "production equipment," "production services," and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment or production services that are within the scope of RCW 82.04.050(2)(a) acquired and used by, a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050.

Sec. 11. RCW 82.12.02595 and 1998 c 182 s 1 are each amended to read as follows:

(1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of tangible personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services.

Sec. 12. RCW 82.12.810 and 1997 c 368 s 3 are each amended to read as follows:

(1) For the purposes of this section, "air pollution control facilities" mean any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation.

(2) The provisions of this chapter do not apply in respect to:

(a) The use of air pollution control facilities installed and used by a light and power business, as defined in RCW 82.16.010, in generating electric power; or

(b) The use of labor and services performed in respect to the installing of air pollution control facilities.

(3) The exemption provided under this section applies only to air pollution control facilities that are:

(a) Constructed or installed after May 15, 1997, and used in a thermal electric generation facility placed in operation after December 31, 1969, and before July 1, 1975; and

(b) Constructed or installed to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW.

(4) This section does not apply to the use of tangible personal property for maintenance or repairs of the pollution control equipment or to labor and services performed in respect to such maintenance or repairs.

(5) If production of electricity at a thermal electric generation facility for any calendar year after 2002 and before 2023 falls below a twenty percent annual capacity factor for the generation facility, all or a portion of the tax previously exempted under this section in respect to construction or installation of air pollution control facilities at the generation facility shall be due according to the schedule provided in RCW 82.08.810(5).

(6) RCW 82.32.393 applies to this section.

Sec. 13. RCW 82.12.820 and 2000 c 103 s 9 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 and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the 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.

Sec.14. RCW 82.12.840 and 2000 c 40 s 3 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, and to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible 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.

Sec. 15. RCW 82.12.890 and 2001 2nd sp.s. c 18 s 3 are each amended to read as follows:

The provisions of this chapter do not apply with respect to the use by an eligible person of tangible personal property that becomes an ingredient or component of dairy nutrient management equipment and facilities, as defined in RCW 82.08.890, or to labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property. The equipment and facilities must be used exclusively for activities necessary to maintain a dairy management plan as required under chapter 90.64 RCW. This exemption applies to the use of tangible personal property or labor and services made after the dairy nutrient management plan is certified under chapter 90.64 RCW. The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section.

Sec. 16. RCW 82.12.900 and 2001 2nd sp.s. c 18 s 5 are each amended to read as follows:

The provisions of this chapter do not apply with respect to the use of anaerobic digesters ~~((or)),~~ tangible personal property that becomes an ingredient or component of anaerobic digesters ~~((to treat primarily dairy manure)),~~ or the use of services rendered in respect to installing, repairing, cleaning, altering, or improving eligible tangible personal property by an eligible person establishing or operating an anaerobic digester, as defined in RCW 82.08.900. The anaerobic digester must be used primarily to treat dairy manure.

NEW SECTION. Sec. 17. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply with respect to the use by municipal corporations, the state, and all political subdivisions thereof of tangible personal property consumed and/or of labor and services as defined in RCW 82.04.050(2)(a) rendered in respect to contracts for watershed protection and/or flood prevention. This exemption is limited to that portion of the selling price that is reimbursed by the United States government according to the provisions of the watershed protection and flood prevention act (68 Stat. 666; 16 U.S.C. Sec. 101 et seq.).

Sec. 18. RCW 82.12.0251 and 1997 c 301 s 1 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use:

(1) Of any article of tangible personal property, and services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington; ~~((or in respect to the use))~~

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property; ~~((or in respect to the use))~~

(3) Of household goods, personal effects, and private motor vehicles, (~~not including motor homes~~) and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles does not include motor homes.

(4) For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, and "services" means services defined as retail sales in RCW 82.04.050(2)(a).

NEW SECTION. Sec. 19. RCW 82.12.0252 (Exemptions—Use of tangible personal property upon which tax has been paid—Use of tangible personal property acquired by a previous bailee from same bailor before June 9, 1961) and 1980 c 37 s 52 are each repealed.

NEW SECTION. Sec. 20. The legislature finds that in the enactment of chapter 367, Laws of 2002, some use tax exemptions were not updated to reflect the change in taxability regarding services. It is the legislature's intent to correct this omission by amending the various use tax exemptions so that services exempt from the sales tax are also exempt from the use tax. Sections 1 through 19 of this act apply retroactively to June 1, 2002. The department of revenue shall refund any use taxes paid and forgive use taxes unpaid as a result of the omission.

NEW SECTION. Sec. 21. 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 by the House March 13, 2003.

Passed by the Senate March 14, 2003.

Approved by the Governor March 18, 2003.

Filed in Office of Secretary of State March 18, 2003.

CHAPTER 6

[House Bill 1280]

UNIVERSITIES—FINANCING CONTRACTS

AN ACT Relating to financing contracts for research facilities or equipment of state universities; and amending RCW 28B.10.022 and 39.94.040.

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

Sec. 1. RCW 28B.10.022 and 2002 c 151 s 5 are each amended to read as follows:

(1) The boards of regents of the state universities and the boards of trustees of the regional universities, The Evergreen State College, and the state board for community and technical colleges, are severally authorized to enter into financing contracts as provided in chapter 39.94 RCW. Except as provided in ((this section)) subsection 2 of this section, financing contracts shall be subject

to the approval of the state finance committee. (~~Except for facilities financed under chapter 28B.140 RCW;~~)

(2) The board of regents of a state university may enter into financing contracts which are payable solely from and secured by all or any component of the fees and revenues of the university derived from its ownership and operation of its facilities not subject to appropriation by the legislature and not constituting "general state revenues," as defined in Article VIII, section 1 of the state Constitution, without the prior approval of the state finance committee.

(3) Except for financing contracts for facilities or equipment described under chapter 28B.140 RCW, the board of regents shall notify the state finance committee at least sixty days prior to entering into such contract and provide information relating to such contract as requested by the state finance committee.

Sec. 2. RCW 39.94.040 and 2002 c 151 s 6 are each amended to read as follows:

(1) Except as provided in RCW 28B.10.022 (~~and chapter 28B.140 RCW~~), the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by another agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the department of information services.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) Except for financing contracts for real property used for the purposes described under chapter 28B.140 RCW, the state may not enter into any financing contract for real property of the state without prior approval of the legislature.

(5) The state may not enter into any financing contract on behalf of an other agency without the approval of such a financing contract by the governing body of the other agency.

Passed by the House February 12, 2003.

Passed by the Senate March 11, 2003.

Approved by the Governor March 19, 2003.

Filed in Office of Secretary of State March 19, 2003.

CHAPTER 7

[Substitute Senate Bill 5044]

ARMED FORCES—TENANCY TERMINATION

AN ACT Relating to giving notice of the termination of a tenancy; amending RCW 59.18.200, 59.18.220, and 59.20.090; and declaring an emergency.

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

Sec. 1. RCW 59.18.200 and 1979 ex.s. c 70 s 1 are each amended to read as follows:

(1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of (~~said~~) the months or periods of tenancy, given by either party to the other.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependant, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.

(2) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership or plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section(~~:- PROVIDED, That~~). However, if after giving the ninety-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant.

Sec. 2. RCW 59.18.220 and 1973 1st ex.s. c 207 s 22 are each amended to read as follows:

(1) In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time.

(2) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a tenancy for a specified time if the tenant receives reassignment or deployment orders. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt.

Sec. 3. RCW 59.20.090 and 1998 c 118 s 3 are each amended to read as follows:

(1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed

for the term of the original rental agreement, unless a different specified term is agreed upon.

(2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent.

(3) A tenant shall notify the landlord in writing one month prior to the expiration of a rental agreement of an intention not to renew.

(4)(a) The tenant may terminate the rental agreement upon thirty days written notice whenever a change in the location of the tenant's employment requires a change in his residence, and shall not be liable for rental following such termination unless after due diligence and reasonable effort the landlord is not able to rent the mobile home lot at a fair rental. If the landlord is not able to rent the lot, the tenant shall remain liable for the rental specified in the rental agreement until the lot is rented or the original term ends;

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than thirty days notice if ~~((he))~~ the tenant receives reassignment or deployment orders which do not allow greater notice. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt.

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 by the Senate February 11, 2003.

Passed by the House March 15, 2003.

Approved by the Governor March 24, 2003.

Filed in Office of Secretary of State March 24, 2003.

CHAPTER 8

[Engrossed Senate Bill 5279]

TRANSPORTATION EFFICIENCY AND ACCOUNTABILITY COMMITTEE

AN ACT Relating to extending the expiration date of the transportation permit efficiency and accountability committee; amending RCW 47.06C.010, 47.06C.040, and 47.06C.901; and declaring an emergency.

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

Sec. 1. RCW 47.06C.010 and 2001 1st sp.s. c 2 s 1 are each amended to read as follows:

The legislature finds that the public health and safety of its citizens, the natural resources, and the environment are vital interests of the state that need to be protected and preserved. The legislature further finds that the safety of the traveling public and the state's economic well-being are vital interests that depend upon the development of cost-effective and efficient transportation systems planned, designed, constructed, and maintained through expedited permit decision-making processes.

It is the intent of the legislature to achieve transportation permit reform that expedites the delivery of ~~((statewide significant))~~ transportation projects through a streamlined approach to environmental permit decision making. To optimize

the limited resources available for transportation system improvements and environmental protection, state regulatory and natural resource agencies, public and private sector interests, Indian tribes, local and regional governments, applicable federal agencies, and the department of transportation must work cooperatively to establish common goals, minimize project delays, develop consistency in the application of environmental standards, maximize environmental benefits through coordinated investment strategies, and eliminate duplicative processes through assigned responsibilities of selected permit drafting and compliance activities between state and federal agencies.

Therefore, the transportation permit efficiency and accountability committee is created. The committee shall integrate current environmental standards, but may not create new environmental standards. The committee shall conduct three environmental permit streamlining pilot projects and create a process to develop general permits. Additionally, the committee shall seek federal delegation to the state where appropriate to streamline transportation projects.

Sec. 2. RCW 47.06C.040 and 2001 1st sp.s. c 2 s 4 are each amended to read as follows:

(1)(a) The committee and its authorized technical subcommittees shall develop a one-stop permit decision-making process that uses interdisciplinary review of transportation projects of statewide significance to streamline and expedite permit decision making. The committee shall collaborate with appropriate agencies and parties to identify existing environmental standards, to assess the application of those standards, and develop an integrated permitting process based upon environmental standards and best management practices, which may use prescriptive or performance standards, for transportation projects of statewide significance that can be applied with certainty, consistency, and assurance of swift permit action, while taking into account the varying environmental conditions throughout the state.

(b) By June 30, 2003, the committee shall develop a detailed work plan of one-stop permitting activities for review by the legislature. The work plan must include both a schedule to use the one-stop permit process on all funded transportation projects of statewide significance and any additional resources needed to ensure that this occurs. This work plan must include a process that enables the department to propose permit terms and conditions for permitting agency review and approval.

(c) The committee shall provide a status report to the legislature by December 31, 2003, and shall also identify barriers and opportunities to achieve a concurrent public review process, concurrent public hearings, and a unified appeals process for one-stop permitting.

(2) The committee shall give notice to the legislative authority of each affected county and city of the projects that are designated as transportation projects of statewide significance.

(3) The committee shall create a technical subcommittee with representation at a minimum from the department of fish and wildlife, the department of ecology, and the department of transportation.

(a) Within six months from the first meeting of the committee, the subcommittee shall create a process to develop a programmatic approach for transportation projects. The committee shall review the department's

construction project list to determine which projects or activities may be included in the programmatic approach and develop agreements ~~((to cover))~~ with a goal of covering seventy percent of those projects or activities with programmatic agreements. At a minimum, this process must require that decisions on minor variations to the requirements of a programmatic approach must be provided by the permit decision-making agencies within twenty-one days of submittal.

(b) By June 30, 2003, the committee shall prioritize programmatic agreement opportunities identified in (a) of this subsection, develop a detailed work plan to achieve the goals set forth, and submit the report and plan to the legislature. The work plan must be reviewed and updated on a quarterly basis and submitted to the legislature twice yearly. This work plan must include the following elements:

(i) A schedule of activities and resources needed to achieve completion of the nine highest priority multiagency programmatic agreements by June 30, 2004;

(ii) A prioritized list of the remaining departmental activities eligible for programmatic, multiagency consideration by September 30, 2003;

(iii) A schedule of activities and resources to achieve completion of the prioritized list of programmatic agreements by December 31, 2005.

(c) The committee shall work with local governments to identify opportunities to integrate local government requirements in the agreements or permits identified in (b) of this subsection.

(d) The technical subcommittee's recommendations must be approved by a majority of the voting members of the committee.

(4) The committee shall explore the development of a consolidated local permit process.

(5) The committee shall conduct one or more pilot projects to implement the collaborative review process set forth in RCW 36.70A.430 to review and coordinate state and local permits for a transportation project funded in the transportation budget and that crosses more than one city or county boundary.

(6) The committee shall appoint a task force of representatives from cities and counties, the department of transportation, and other agencies as appropriate to identify one or more city or county permits for activities for which uniform standards can be developed for application by local governments. It is the goal of the task force to develop uniform standards and best practices for these identified permits that may be used by local governments in issuing their permits. The task force shall identify strategies for local governments to adapt these standards and best practices to local conditions. The committee shall encourage local governments to use these standards and best practices in local ordinances. The task force shall submit a progress report to the committee and the legislature by December 31, 2003, and shall conclude its work and report its final recommendations for review to the committee and the legislature no later than December 31, 2004.

(7) The committee shall develop and prioritize a list of permit streamlining opportunities, specifically identifying substantive and procedural duplications and recommendations for resolving those duplications. The committee shall evaluate current laws and regulations and develop recommendations on ways to minimize the lapsing of permits. The committee shall evaluate flexible

approaches that maximize transportation and environmental interests and make recommendations regarding where those approaches should be implemented. ~~((The committee shall report its findings and recommendations to the legislature by January 15, 2002.~~

~~(6))~~ (8) The committee shall undertake the following activities to develop a watershed approach to environmental mitigation:

(a) Develop methodologies for analyzing environmental impacts and applying compensatory mitigation consistent with a watershed-based approach before final design, including least cost methodology and low-impact development methodology;

(b) Assess models to collate and access watershed data to support early agency involvement in transportation planning and reviews under the national Environmental Policy Act and the State Environmental Policy Act; ~~((and))~~

(c) Use existing best available information from watershed planning efforts, lead entities, regional fisheries enhancement groups, and other recognized entities as deemed appropriate by the committee, to determine potential mitigation requirements for projects within a watershed. Priority consideration should be given to the use of the state's alternative mitigation policy guidance to best link transportation mitigation needs with local watershed and lead entity project lists; and

(d) By June 30, 2003, develop a detailed work plan that covers watershed-based mitigation activities. This work plan must be submitted to the legislature and include the following elements:

(i) A schedule of activities and resources needed to complete a watershed-based mitigation policy by December 31, 2003, that covers elements of permitting deemed appropriate by the committee;

(ii) A schedule of activities and resources needed to develop watershed-based mitigation decision-making tools by June 30, 2004;

(iii) A schedule of activities and resources needed to complete a test of technical and policy methods of watershed-based mitigation decision making by December 31, 2004, for a funded project in an urbanized area of the state; and

(iv) A schedule to integrate watershed-based mitigation policies, technical tools, and procedures for projects by June 30, 2005.

~~((7))~~ (9)(a) The committee shall seek federal delegation to the state where appropriate to streamline permit processes for transportation projects of statewide significance including: Delegation of section 404 permit authority under the Clean Water Act; nonfederal lead agency status under the federal Endangered Species Act; section 106 cultural resource designation under the National Historic Preservation Act; and other appropriate authority that when delegated should result in permit streamlining.

~~((8))~~ (b) The department, the department of ecology, and the department of fish and wildlife shall jointly review relevant federal, state, and local environmental laws, regulations, policies, guidance, studies, and streamlining initiatives, and shall report to the committee and the legislature by September 30, 2003, on those instances where such might allow for delegation to the department or some other duly recognized entity as appropriate. The report must include recommendations on:

(i) How to delegate consistent with federal permit streamlining efforts contained in new federal transportation authorizations and under Presidential

Executive Order number 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, September 18, 2002:

(ii) How to maximize possible use of programmatic approaches to simplify issuance of federally required permits and project approvals;

(iii) The scope, roles, and responsibilities associated with any such delegation, especially as relates to regulatory standard setting, permitting, and oversight; and

(iv) A work plan and schedule of activities and resources needed to implement the recommendations of the department, the department of ecology, and the department of fish and wildlife on this matter.

The committee shall take action on the report, and shall report to the legislature by December 31, 2003, and every six months thereafter on the status of such delegation efforts.

(10) The committee shall develop a dispute resolution process to resolve conflicts in interpretation of environmental standards and best management practices, mitigation requirements, permit requirements, assigned responsibilities, and other related issues by September 1, 2001. The dispute resolution process may not abrogate or supplant any appeal right of any party under existing statutes. The dispute resolution process must be designed to include federal agencies if they choose to participate.

~~((9))~~ (11) The committee shall develop preliminary models and strategies for agencies to test how best to maximize the environmental investment of transportation funds on a watershed basis. After agencies test the models and strategies developed by the committee, the committee shall evaluate the models and strategies and make recommendations to the legislature.

~~((10))~~ (12) The committee shall develop a consistent methodology for the timely and predictable submittal and evaluation of completed plans and specifications detailing project elements that impact environmental resources as well as proposed mitigation measures during the preliminary specifications and engineering phase of project development and submit information on the consistent methodology to the legislature.

~~((11))~~ (13) The committee shall provide a summary report to the legislature on ~~((September 15, 2004))~~ December 31, 2003, and every six months thereafter that details the committee's status and performance and its progress in implementing its master work plan.

Sec. 3. RCW 47.06C.901 and 2001 1st sp.s. c 2 s 13 are each amended to read as follows:

This act expires March 31, ~~((2003))~~ 2006.

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 by the Senate March 18, 2003.

Passed by the House March 28, 2003.

Approved by the Governor March 31, 2003.

Filed in Office of Secretary of State March 31, 2003.

CHAPTER 9

[Substitute House Bill 1063]

PUBLIC WORKS BOARD—PROJECTS

AN ACT Relating to authorization for projects recommended by the public works board; amending 2001 2nd sp.s. c 8 s 131 (uncodified); creating a new section; making appropriations; 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 appropriated from the public works assistance account for the 2001-2003 biennium:

(1) Annapolis Water District-domestic water project-decommission wells 6 and 7, including removing equipment and sealing both wells so that no water may flow freely between aquifers or to the surface. \$318,750

(2) Clark County-road project-construct approximately seven-tenths of a mile of roadway, install erosion control materials, realign adjoining street and roads, install traffic control devices and signs, construct a bike path, make storm drainage improvements, replace culverts, install sound control devices, add sidewalks, and make other related improvements to this area of roadway. \$1,400,000

(3) Highline Water District-domestic water project-construct a secondary source for the district's 600 zone, replace approximately six thousand five hundred feet of pipe, construct approximately one thousand feet of new transmission pipe, and install the equipment and appurtenances to operate the system. It will also rehabilitate a pump station along with installing the necessary systems to operate and control the pump \$749,700

(4) Karcher Creek Sewer District-sanitary sewer project-replace and relocate the Crownwood pump station. Necessary power and sewer line connections will be made. All associated facilities, equipment, controls, and related items will be constructed or installed in order to operate the station safely and efficiently. \$425,000

(5) Puyallup-road project-improve approximately seven hundred feet of roadway and construct approximately one thousand feet of a new arterial street. Approximately one thousand two hundred feet of water line will be replaced. Approximately four thousand feet of storm pipe will be installed during the project. And approximately seven hundred feet of sewer line will be replaced. \$6,000,000

(6) Selah-sanitary sewer project-upgrade its wastewater treatment system by continuing a project to construct sludge handling, treatment, and dewatering facilities. The project includes the construction of these facilities, buildings to house the facilities, and systems to handle the wastewater. Other equipment and materials necessary to operate and manage the facilities and processes will be installed. \$1,128,400

(7) Williams Lake Sewer District #2-sanitary sewer project-design and construct new septic tank effluent sewer collection and transport system at east end of Williams Lake \$876,800

(8) Yakima-domestic water project-improve its water system by constructing a coagulation plant, rehabilitate and upgrade the filter system,

upgrade storage facilities, and install a generation system. All associated controls, telemetry, and related equipment will be installed. \$2,694,500

(9) Friday Harbor-sanitary sewer project-construct a new secondary wastewater treatment plant. Facilities, equipment, material, controls, and related items will be constructed or installed in order to run the plant at optimum performance. A sludge dryer will be installed in order to develop alternative disposal methods. \$2,000,000

(10) Lake Chelan Reclamation District-sanitary sewer project-replace or rehabilitate approximately forty thousand feet of force main, rehabilitate approximately thirty thousand feet of collector mains, replace five lift stations, upgrade telemetry and odor control facilities, install emergency generators, upgrade approximately one thousand six hundred side sewer services, and resurface roadway as necessary \$5,376,050

(11) Val Vue Sewer District-sanitary sewer project-project will remedy problems associated with leaking manholes, rehabilitation of sewer mains, installing emergency generators, installing sewer lines, and replacement of side sewers. Other related equipment and material will be installed as necessary to reduce infiltration of storm water and to ensure optimum performance of the system \$1,301,350

(12) Spokane-sanitary sewer project-rehabilitate the main line of its sanitary sewer system in the Central Business District. Approximately thirty-six pipe sections will be rehabilitated over the three-year period. Other associated improvements to the sewer system will be made as needed. \$901,000

(13) Karcher Creek Sewer District-sanitary sewer project-design and construct a replacement collection system in the Beach Drive service area. The project will replace approximately five thousand four hundred feet of sewer main and two thousand five hundred feet of lateral sewer pipe. A new sewer main will be constructed to convey sewage from the pump station to the treatment plant. Other associated equipment and material will be installed in order to operate and manage the system. \$807,500

(14) Mount Vernon-sanitary sewer project-install approximately five hundred feet of outfall pipe to the wastewater treatment system. Other related equipment and material will be installed to ensure the system works as designed \$1,000,000

(15) City of Camas-road project-reconstruct and improve approximately two and one-tenths miles of roadway. Improvements include adding lanes and turn lanes, sidewalks, bike lanes, and related signage, lighting, erosion control, and other components associated with a major urban arterial \$3,000,000

(16) Richland-domestic water project-install water mains, hydrants, control valves, and related equipment. Decommissioned lines will be sealed. Lines to the meters will be replaced. All sites disturbed by the project will be rehabilitated. \$8,755,000

(17) City of Everett-sanitary sewer project-install pumps and wells to move and stage effluent, install transmission pipes, install collection pipes, recondition existing pipe as needed, install at least one railroad casing system, and install other equipment and material necessary to complete the transition to the Puget Sound outfall \$5,490,000

(18) City of Cle Elum-sanitary sewer project-construct a regional wastewater treatment facility to serve the City of Cle Elum, the city's urban

growth area, the Town of South Cle Elum, and a master planned resort. Build or install all of the associated piping, telemetry, storage, and treatment facilities. Construct or install related equipment \$1,000,000

(19) Douglas County Sewer District 1-sanitary sewer project-construct approximately two miles of a sewer interceptor line, four thousand five hundred feet of gravity-fed sewer lines, a two hundred fifty-gallon a minute lift station, and five thousand eight hundred feet of force main (all figures are approximate). The district will install controls and telemetry necessary to manage the system and will repair all damage to the roadway \$1,936,050

(20) Peshastin Water District-domestic water project-replace approximately four miles of distribution and transmission lines throughout the district. Two wells will be rehabilitated, sources meters will be installed, electrical and telemetry systems will be installed, a new pump station will be constructed, and a new reservoir will be created. Other associated equipment, material, and systems will be constructed or installed in order to make the system perform at its optimum \$1,314,600

(21) Seattle-bridge project-construct new approaches to the north and south ends of the Fremont Bridge and replace electrical and mechanical equipment. Other related improvements necessary to enhance public safety and use of the bridge will be made as part of this project \$10,000,000

(22) City of Bremerton-sanitary sewer project-design and construct the improvements necessary to virtually eliminate the combined sewer overflows that affect Anderson Cove. Approximately twelve separate improvements to the flow diversion process will be implemented as a result of the design work \$475,000

(23) Cowlitz County PUD 1-domestic water project-replace approximately fifty thousand feet of waterline on several streets within the Upper Ostrander service area. Install fire hydrants and other water line related equipment. Replace a reservoir roof. Make other related system improvements. . . \$491,661

(24) City of Bonney Lake-domestic water project-construct a water treatment facility that includes a disinfection system. The project also includes the installation of water mains. Corrosion control facilities will be constructed, including storage tanks, telemetry, pumps, metering, and related equipment and facilities. \$1,174,700

(25) City of Battle Ground-road project-rehabilitate and improve west Main Street for approximately one mile. Four through lanes will be upgraded. A center turn lane will be installed. Bicycle paths will be constructed along with curbs and sidewalks. Water and sewer facilities running under the street will be upgraded. Storm water drainage will be improved. Traffic controls and signs will be installed as needed. Other related work to the roadway will be done to ensure the street is safe and operates as designed. \$2,000,000

(26) City of Enumclaw-sanitary sewer project-upgrade and expand its wastewater treatment plant by modifying the headworks, adding a clarifier, constructing aeration basins, adding anaerobic basins and clarifiers, constructing chemical facilities, installing dewatering facilities, enlarging the laboratory, increasing plant capacity, and modifying or upgrading related facilities and equipment \$9,250,000

(27) West Richland-sanitary sewer project-install approximately thirty-two thousand feet of sewer pipe, install access sites, decommission a lagoon, install a

lift station, construct a lined irrigation canal crossing, repair roadway disturbed by the project, and install telemetry and related equipment to ensure the system operates as designed \$1,800,000

Total \$71,666,061

Sec. 2. 2001 2nd sp.s. c 8 s 131 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Public Works Trust Fund (02-4-013)

The appropriation in this section is subject to the following conditions and limitations:

\$20,000,000 of the general fund federal appropriation is provided solely for infrastructure projects that will improve water quality and benefit salmon. Projects should be designed to have immediate benefits to water quality and salmon as alternatives to habitat acquisition and improvements. The public works board is authorized and directed to seek funding through the Northwest power planning council, the conservation and reinvestment act, and other federal funding sources to supplement existing loan programs with grants or loans for water quality projects. The public works board shall utilize existing programs within chapter 43.155 RCW to distribute these additional grants or loans, with an emphasis on projects providing immediate benefits to water quality and salmon habitat. For the purposes of this section, the public works board may utilize federal funds as grants in conjunction with loans from chapter 43.155 RCW.

Appropriation:

Public Works Assistance Account—State	(\$230,300,000)
	<u>\$288,372,911</u>
General Fund—Federal	\$20,000,000
Subtotal Appropriation	\$250,300,000
Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs)	\$1,215,700,000
TOTAL	(\$1,466,000,000)
	<u>\$1,524,072,911</u>

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 by the House February 10, 2003.
- Passed by the Senate March 18, 2003.
- Approved by the Governor April 4, 2003.
- Filed in Office of Secretary of State April 4, 2003.

CHAPTER 10

[Substitute Senate Bill 5403]

FISCAL MATTERS—SUPPLEMENTAL OPERATING APPROPRIATIONS

AN ACT Relating to fiscal matters; amending 2002 c 371 ss 112, 113, 114, 118, 119, 122, 125, 127, 128, 132, 133, 135, 137, 139, 143, 145, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 216, 218, 219, 220, 221, 222, 224, 302, 303, 307, 308, 309, 401, 402, 501, 502, 504, 505, 506, 507, 509, 510, 511, 512, 513, 514, 515, 516, 518, 604, 605, 606, 607, 608, 609, 610, 612, 616, 617, 619, 701, 703, 704, 712, 719, 726, 727, and 802 (uncodified); amending 2002 c 238 ss 202, 109, and 223 (uncodified); amending 2001 2nd sp.s. c 8 ss 158, 172, 658, 668, and 352 (uncodified); amending 2001 2nd sp.s. c 7 s 506 (uncodified); adding new sections to 2001 2nd sp.s. c 7 (uncodified); repealing 2002 c 238 s 204 (uncodified); making appropriations; authorizing expenditures for capital expenditures; and declaring an emergency.

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

PART I
GENERAL GOVERNMENT

Sec. 101. 2002 c 371 s 112 (uncodified) is amended to read as follows:

FOR THE ADMINISTRATOR FOR THE COURTS

Table with 2 columns: Description and Amount. Rows include General Fund—State Appropriation (FY 2002), General Fund—State Appropriation (FY 2003), Public Safety and Education Account—State Appropriation, Judicial Information Systems Account—State Appropriation, and TOTAL APPROPRIATION.

The appropriations in this section are subject to the following conditions and limitations:

(1) Funding provided in the judicial information systems account appropriation shall be used for the operations and maintenance of technology systems that improve services provided by the supreme court, the court of appeals, the office of public defense, and the administrator for the courts.

(2) ((No moneys appropriated in this section may be expended by the administrator for the courts for payments in excess of fifty percent of the employer contribution on behalf of superior court judges for insurance and health care plans and federal social security and medicare and medical aid benefits. As required by Article IV, section 13 of the state Constitution and 1996 Attorney General's Opinion No. 2, it is the intent of the legislature that the costs of these employer contributions shall be shared equally between the state and county or counties in which the judges serve. The administrator for the courts shall continue to implement procedures for the collection and disbursement of these employer contributions. During each fiscal year in the 2001-03 biennium, the office of the administrator for the courts shall send written notice to the office of community development in the department of community, trade, and economic development when each county pays its fifty percent share for the year.

~~(3))~~ \$223,000 of the public safety and education account appropriation is provided solely for the gender and justice commission.

~~((4))~~ (3) \$308,000 of the public safety and education account appropriation is provided solely for the minority and justice commission.

~~((5))~~ (4) \$278,000 of the general fund—state appropriation for fiscal year 2002, \$285,000 of the general fund—state appropriation for fiscal year 2003, and \$263,000 of the public safety and education account appropriation are provided solely for the workload associated with tax warrants and other state cases filed in Thurston county.

~~((6))~~ (5) \$750,000 of the general fund—state appropriation for fiscal year 2002 and \$750,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for court-appointed special advocates in dependency matters. The administrator for the courts, after consulting with the association of juvenile court administrators and the association of court-appointed special advocate/guardian ad litem programs, shall distribute the funds to volunteer court-appointed special advocate/guardian ad litem programs. The distribution of funding shall be based on the number of children who need volunteer court-appointed special advocate representation and shall be equally accessible to all volunteer court-appointed special advocate/guardian ad litem programs. The administrator for the courts shall not retain more than six percent of total funding to cover administrative or any other agency costs.

~~((7))~~ (6) \$750,000 of the public safety and education account—state appropriation is provided solely for judicial program enhancements. Within the funding provided in this subsection, the administrator for the courts, in consultation with the supreme court, shall determine the program or programs to receive an enhancement. Among the programs that may be funded from the amount provided in this subsection are unified family courts.

~~((8))~~ (7) \$1,800,000 of the judicial information systems account—state appropriation is provided solely for improvements and enhancements to the judicial information systems. This funding shall only be expended after the office of the administrator for the courts certifies to the office of financial management that there will be at least a \$1,000,000 ending fund balance in the judicial information systems account at the end of the 2001-03 biennium.

Sec. 102. 2002 c 371 s 113 (uncodified) is amended to read as follows:

FOR THE OFFICE OF PUBLIC DEFENSE

General Fund—State Appropriation (FY 2002)	\$600,000
<u>General Fund—State Appropriation (FY 2003)</u>	<u>\$170,000</u>
<u>General Fund—Private/Local Appropriation (FY 2003)</u>	<u>\$5,000</u>
Public Safety and Education Account—State	
Appropriation	\$12,344,000
TOTAL APPROPRIATION	(\$13,444,000)
	<u>\$13,119,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$204,000 of the public safety and education account appropriation is provided solely to increase the reimbursement for private attorneys providing constitutionally mandated indigent defense in nondeath penalty cases.

(2) \$51,000 of the public safety and education account appropriation is provided solely for the implementation of chapter 303, Laws of 1999 (court funding).

(3) Amounts provided from the public safety and education account appropriation in this section include funding for investigative services in death penalty personal restraint petitions.

(4) The general fund—state appropriations are provided solely for the continuation of a dependency and termination legal representation funding pilot program.

(a) The goal of the pilot program shall be to enhance the quality of legal representation in dependency and termination hearings, thereby reducing the number of continuances requested by contract attorneys, including those based on the unavailability of defense counsel. To meet the goal, the pilot shall include the following components:

(i) A maximum caseload requirement of 90 dependency and termination cases per full-time attorney;

(ii) Implementation of enhanced defense attorney practice standards, including but not limited to those related to reasonable case preparation and the delivery of adequate client advice, as developed by Washington state public defense attorneys and included in the office of public defense December 1999 report *Costs of Defense and Children's Representation in Dependency and Termination Hearings*;

(iii) Use of investigative and expert services in appropriate cases; and

(iv) Effective implementation of indigency screening of all dependency and termination parents, guardians, and legal custodians represented by appointed counsel.

(b) The pilot program shall be established in one eastern and one western Washington juvenile court.

(c) The director shall contract for an independent evaluation of the pilot program benefits and costs. A final evaluation shall be submitted to the governor and the fiscal committees of the legislature no later than February 1, 2002.

(d) The chair of the office of public defense advisory committee shall appoint an implementation committee to:

(i) Develop criteria for a statewide program to improve dependency and termination defense;

(ii) Examine caseload impacts to the courts resulting from improved defense practices; and

(iii) Identify methods for the efficient use of expert services and means by which parents may effectively access services.

If sufficient funds are available, the office of public defense shall contract with the Washington state institute for public policy to research how reducing dependency and termination case delays affects foster care and to identify factors that are reducing the number of family reunifications that occur in dependency and termination cases.

(5) \$50,000 of the public safety and education account—state appropriation is provided solely for the evaluation required in chapter 92, Laws of 2000 (DNA testing).

(6) \$235,000 of the public safety and education account—state appropriation is provided solely for the office of public defense to contract with an existing public defender association to establish a capital defense assistance center.

Sec. 103. 2002 c 371 s 114 (uncodified) is amended to read as follows:

FOR THE OFFICE OF THE GOVERNOR

General Fund—State Appropriation (FY 2002)	\$4,497,000
General Fund—State Appropriation (FY 2003)	(\$4,028,000)
	<u>\$3,970,000</u>
General Fund—Federal Appropriation	\$219,000
Water Quality Account—State Appropriation	(\$3,908,000)
	<u>\$3,882,000</u>
TOTAL APPROPRIATION	(\$12,652,000)
	<u>\$12,568,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) ~~(\$3,908,000)~~ \$3,882,000 of the water quality account appropriation and \$219,000 of the general fund—federal appropriation are provided solely for the Puget Sound water quality action team to implement the Puget Sound work plan and agency action items PSAT-01 through PSAT-05.

(2) \$100,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the salmon recovery office to support the efforts of the independent science panel.

Sec. 104. 2002 c 371 s 118 (uncodified) is amended to read as follows:

FOR THE GOVERNOR’S OFFICE OF INDIAN AFFAIRS

General Fund—State Appropriation (FY 2002)	\$269,000
General Fund—State Appropriation (FY 2003)	(\$274,000)
	<u>\$279,000</u>
TOTAL APPROPRIATION	(\$543,000)
	<u>\$548,000</u>

Sec. 105. 2002 c 371 s 119 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON ASIAN-AMERICAN AFFAIRS

General Fund—State Appropriation (FY 2002)	\$233,000
General Fund—State Appropriation (FY 2003)	(\$201,000)
	<u>\$184,000</u>
TOTAL APPROPRIATION	(\$434,000)
	<u>\$417,000</u>

Sec. 106. 2002 c 371 s 122 (uncodified) is amended to read as follows:

FOR THE ATTORNEY GENERAL

General Fund—State Appropriation (FY 2002)	\$4,811,000
General Fund—State Appropriation (FY 2003)	(\$4,070,000)
	<u>\$4,073,000</u>
General Fund—Federal Appropriation	\$2,868,000
Public Safety and Education Account—State Appropriation	\$1,753,000

Tobacco Prevention and Control Account	
Appropriation.	\$277,000
New Motor Vehicle Arbitration Account—State	
Appropriation.	\$1,163,000
Legal Services Revolving Account—State	
Appropriation.	\$147,422,000
TOTAL APPROPRIATION.	(\$162,364,000)
	<u>\$162,367,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The attorney general shall report each fiscal year on actual legal services expenditures and actual attorney staffing levels for each agency receiving legal services. The report shall be submitted to the office of financial management and the fiscal committees of the senate and house of representatives no later than ninety days after the end of each fiscal year.

(2) The attorney general and the office of financial management shall modify the attorney general billing system to meet the needs of user agencies for greater predictability, timeliness, and explanation of how legal services are being used by the agency. The attorney general shall provide the following information each month to agencies receiving legal services: (a) The full-time equivalent attorney services provided for the month; (b) the full-time equivalent investigator services provided for the month; (c) the full-time equivalent paralegal services provided for the month; and (d) direct legal costs, such as filing and docket fees, charged to the agency for the month.

(3) Prior to entering into any negotiated settlement of a claim against the state, that exceeds five million dollars, the attorney general shall notify the director of financial management and the chairs of the senate committee on ways and means and the house of representatives committee on appropriations.

(4)(a) \$87,000 of the general fund—state appropriation for fiscal year 2003 is provided solely for the office of the attorney general to prepare a report by October 1, 2002, on federal and Indian reserved water rights, and to submit the report to the standing committees of the legislature having jurisdiction over water resources. The objectives of the report shall be to:

- (i) Examine and characterize the types of water rights issues involved;
- (ii) Examine the approaches of other states to such issues and their results;
- (iii) Examine methods for addressing such issues including, but not limited to, administrative, judicial, or other methods, or any combinations thereof; and
- (iv) Examine implementation and funding requirements.

(b) Following receipt of the report, the standing committees of the legislature having jurisdiction over water resources shall seek and consider the recommendations of the relevant departments and agencies of the United States, the federally recognized Indian tribes with water-related interests in the state, and water users in the state and shall develop recommendations.

Sec. 107. 2002 c 371 s 125 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

General Fund—State Appropriation (FY 2002)	\$70,893,000
General Fund—State Appropriation (FY 2003)	(\$60,499,000)

	<u>\$59,723,000</u>
General Fund—Federal Appropriation	((<u>\$173,342,000</u>))
	<u>\$201,965,000</u>
General Fund—Private/Local Appropriation	\$7,980,000
Public Safety and Education Account—State Appropriation	\$10,094,000
Public Works Assistance Account—State Appropriation	\$1,911,000
Salmon Recovery Account—State Appropriation	\$1,500,000
Film and Video Promotion Account—State Appropriation	\$25,000
Building Code Council Account—State Appropriation	((<u>\$1,226,000</u>))
	<u>\$1,061,000</u>
Administrative Contingency Account—State Appropriation	\$1,777,000
Low-Income Weatherization Assistance Account—State Appropriation	\$3,292,000
Violence Reduction and Drug Enforcement Account— State Appropriation	\$7,513,000
Manufactured Home Installation Training Account— State Appropriation	\$256,000
Community Economic Development Account— State Appropriation	\$113,000
Washington Housing Trust Account—State Appropriation	\$10,368,000
Public Facility Construction Loan Revolving Account—State Appropriation	\$586,000
TOTAL APPROPRIATION	((<u>\$351,375,000</u>))
	<u>\$379,057,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) It is the intent of the legislature that the department of community, trade, and economic development receive separate programmatic allotments for the office of community development and the office of trade and economic development. Any appropriation made to the department of community, trade, and economic development for carrying out the powers, functions, and duties of either office shall be credited to the appropriate office.

(2) \$3,085,000 of the general fund—state appropriation for fiscal year 2002 and \$2,838,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for a contract with the Washington technology center. For work essential to the mission of the Washington technology center and conducted in partnership with universities, the center shall not pay any increased indirect rate nor increases in other indirect charges above the absolute amount paid during the 1995-97 fiscal biennium.

(3) \$61,000 of the general fund—state appropriation for fiscal year 2002 and \$62,000 of the general fund—state appropriation for fiscal year 2003 are

provided solely for the implementation of the Puget Sound work plan and agency action item OCD-01.

(4) \$10,804,156 of the general fund—federal appropriation is provided solely for the drug control and system improvement formula grant program, to be distributed in state fiscal year 2002 as follows:

(a) \$3,603,250 to local units of government to continue multijurisdictional narcotics task forces;

(b) \$620,000 to the department to continue the drug prosecution assistance program in support of multijurisdictional narcotics task forces;

(c) \$1,363,000 to the Washington state patrol for coordination, investigative, and supervisory support to the multijurisdictional narcotics task forces and for methamphetamine education and response;

(d) \$200,000 to the department for grants to support tribal law enforcement needs;

(e) \$991,000 to the department of social and health services, division of alcohol and substance abuse, for drug courts in eastern and western Washington;

(f) \$302,551 to the department for training and technical assistance of public defenders representing clients with special needs;

(g) \$88,000 to the department to continue a substance abuse treatment in jails program, to test the effect of treatment on future criminal behavior;

(h) \$697,075 to the department to continue domestic violence legal advocacy;

(i) \$903,000 to the department of social and health services, juvenile rehabilitation administration, to continue youth violence prevention and intervention projects;

(j) \$60,000 to the Washington association of sheriffs and police chiefs to complete the state and local components of the national incident-based reporting system;

(k) \$60,000 to the department for community-based advocacy services to victims of violent crime, other than sexual assault and domestic violence;

(l) \$91,000 to the department to continue the governor's council on substance abuse;

(m) \$99,000 to the department to continue evaluation of Byrne formula grant programs;

(n) \$901,180 to the office of financial management for criminal history records improvement; and

(o) \$825,100 to the department for required grant administration, monitoring, and reporting on Byrne formula grant programs.

These amounts represent the maximum Byrne grant expenditure authority for each program. No program may expend Byrne grant funds in excess of the amounts provided in this subsection. If moneys in excess of those appropriated in this subsection become available, whether from prior or current fiscal year Byrne grant distributions, the department shall hold these moneys in reserve and may not expend them without specific appropriation. These moneys shall be carried forward and applied to the pool of moneys available for appropriation for programs and projects in the succeeding fiscal year. As part of its budget request for the succeeding year, the department shall estimate and request authority to spend any funds remaining in reserve as a result of this subsection.

(5) \$320,000 of the general fund—state appropriation for fiscal year 2002 and \$320,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the rural economic opportunity fund.

(6) \$1,250,000 of the general fund—state appropriation for fiscal year 2002 and \$1,250,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for grants to operate, repair, and staff shelters for homeless families with children.

(7) \$2,500,000 of the general fund—state appropriation for fiscal year 2002 and \$2,500,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for grants to operate transitional housing for homeless families with children. The grants may also be used to make partial payments for rental assistance.

(8) \$1,250,000 of the general fund—state appropriation for fiscal year 2002 and \$1,250,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for consolidated emergency assistance to homeless families with children.

(9) \$205,000 of the general fund—state appropriation for fiscal year 2002 and \$205,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for grants to Washington Columbia river gorge counties to implement their responsibilities under the national scenic area management plan. Of this amount, \$390,000 is provided for Skamania county and \$20,000 is provided for Clark county.

(10) \$698,000 of the general fund—state appropriation for fiscal year 2002, \$698,000 of the general fund—state appropriation for fiscal year 2003, and \$1,101,000 of the administrative contingency account appropriation are provided solely for contracting with associate development organizations to maintain existing programs.

(11) \$600,000 of the public safety and education account appropriation is provided solely for sexual assault prevention and treatment programs.

(12) \$680,000 of the Washington housing trust account appropriation is provided solely to conduct a pilot project designed to lower infrastructure costs for residential development.

(13) \$50,000 of the general fund—state appropriation for fiscal year 2002 and \$50,000 of the general fund—state appropriation for fiscal year 2003 are provided to the department solely for providing technical assistance to developers of housing for farmworkers.

(14) \$370,000 of the general fund—state appropriation for fiscal year 2002, \$371,000 of the general fund—state appropriation for fiscal year 2003, and \$25,000 of the film and video promotion account appropriation are provided solely for the film office to bring film and video production to Washington state.

(15) \$22,000 of the general fund—state appropriation for fiscal year 2002 is provided solely as a matching grant to support the Washington state senior games. State funding shall be matched with at least an equal amount of private or local governmental funds.

(16) \$500,000 of the general fund—state appropriation for fiscal year 2002 and \$500,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for grants to food banks and food distribution centers to increase their ability to accept, store, and deliver perishable food.

(17) \$230,000 of the general fund—state appropriation for fiscal year 2002, \$230,000 of the general fund—state appropriation for fiscal year 2003, and the entire community economic development account appropriation are provided solely for support of the developmental disabilities endowment governing board and startup costs of the endowment program. Startup costs are a loan from the state general fund and will be repaid from funds within the program as determined by the governing board. The governing board may use state appropriations to implement a sliding-scale fee waiver for families earning below 150 percent of the state median family income. The director of the department, or the director of the subsequent department of community development, may implement fees to support the program as provided under RCW 43.330.152.

(18) \$880,000 of the public safety and education account appropriation is provided solely for community-based legal advocates to assist sexual assault victims with both civil and criminal justice issues. If Senate Bill No. 5309 is not enacted by June 30, 2001, the amount provided in this subsection shall lapse.

(19) \$65,000 of the general fund—state appropriation for fiscal year 2002 and \$65,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for a contract with a food distribution program for communities in the southwestern portion of the state and for workers impacted by timber and salmon fishing closures and reductions. The department may not charge administrative overhead or expenses to the funds provided in this subsection.

(20) \$120,000 of the general fund—state appropriation for fiscal year 2002 and \$120,000 of the Washington housing trust account appropriation for fiscal year 2003 are provided solely as one-time pass-through funding to currently licensed overnight youth shelters. If Substitute House Bill No. 2060 (low-income housing) is not enacted by June 30, 2002, the fiscal year 2003 appropriation shall be made from the state general fund.

(21) \$1,868,000 of the Washington housing trust account appropriation for fiscal year 2003 is provided solely for emergency shelter assistance. If Substitute House Bill No. 2060 (low-income housing) is not enacted by June 30, 2002, the fiscal year 2003 appropriation shall be made from the state general fund.

(22) Repayments of outstanding loans granted under RCW 43.63A.600, the mortgage and rental assistance program, shall be remitted to the department, including any current revolving account balances. The department shall contract with a lender or contract collection agent to act as a collection agent of the state. The lender or contract collection agent shall collect payments on outstanding loans, and deposit them into an interest-bearing account. The funds collected shall be remitted to the department quarterly. Interest earned in the account may be retained by the lender or contract collection agent, and shall be considered a fee for processing payments on behalf of the state. Repayments of loans granted under this chapter shall be made to the lender or contract collection agent as long as the loan is outstanding, notwithstanding the repeal of the chapter.

(23) \$75,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the community connections program in Walla Walla.

(24) \$100,000 of the general fund—state appropriation for fiscal year 2002 and \$100,000 of the general fund—state appropriation for fiscal year 2003 are provided to the office of community development solely for the purposes of

providing assistance to industrial workers who have been displaced by energy cost-related industrial plant closures in rural counties. For purposes of this subsection, "rural county" is as defined in RCW 82.14.370(5). The office of community development shall distribute the amount in this subsection to community agencies that assist the displaced industrial workers in meeting basic needs including, but not limited to, emergency medical and dental services, family and mental health counseling, food, energy costs, mortgage, and rental costs. The department shall not retain more than two percent of the amount provided in this subsection for administrative costs.

(25) \$91,500 of the general fund—state appropriation for fiscal year 2002 and \$91,500 of the general fund—state appropriation for fiscal year 2003 are provided solely for services related to the foreign representative contract for Japan.

(26) \$81,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for business finance and loan programs.

(27) \$150,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the quick sites initiative program.

(28) \$120,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for operating a business information hotline.

(29) \$29,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for travel expenses associated with the office of trade and economic development's provision of outreach and technical assistance services to businesses and local economic development associations.

(30) \$100,000 of the general fund—state appropriation for fiscal year 2002 and \$100,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for information technology enhancements designed to improve the delivery of agency services to customers.

~~((32))~~ (31) \$10,111,682 of the general fund—federal appropriation is provided solely for the drug control and system improvement formula grant program, to be distributed in state fiscal year 2003 as follows:

(a) \$3,551,972 to local units of government to continue multijurisdictional narcotics task forces;

(b) \$611,177 to the department to continue the drug prosecution assistance program in support of multijurisdictional narcotics task forces;

(c) \$1,343,603 to the Washington state patrol for coordination, investigative, and supervisory support to the multijurisdictional narcotics task forces and for methamphetamine education and response;

(d) \$197,154 to the department for grants to support tribal law enforcement needs;

(e) \$976,897 to the department of social and health services, division of alcohol and substance abuse, for drug courts in eastern and western Washington;

(f) \$298,246 to the department for training and technical assistance of public defenders representing clients with special needs;

(g) \$687,155 to the department to continue domestic violence legal advocacy;

(h) \$890,150 to the department of social and health services, juvenile rehabilitation administration, to continue youth violence prevention and intervention projects;

(i) \$89,705 to the department to continue the governor's council on substance abuse;

(j) \$97,591 to the department to continue evaluation of Byrne formula grant programs;

(k) \$494,675 to the office of financial management for criminal history records improvement;

(l) \$60,000 to the department for community-based advocacy services to victims of violent crime, other than sexual assault and domestic violence; and

(m) \$813,358 to the department for required grant administration, monitoring, and reporting on Byrne formula grant programs.

These amounts represent the maximum Byrne grant expenditure authority for each program. No program may expend Byrne grant funds in excess of the amounts provided in this subsection. If moneys in excess of those appropriated in this subsection become available, whether from prior or current fiscal year Byrne grant distributions, the department shall hold these moneys in reserve and may not expend them without specific appropriation. These moneys shall be carried forward and applied to the pool of moneys available for appropriation for programs and projects in the succeeding fiscal year. As part of its budget request for the succeeding year, the department shall estimate and request authority to spend any funds remaining in reserve as a result of this subsection.

~~(((33)) \$165,000 of the building code council account appropriation for fiscal year 2003 is provided solely for the state building code council pursuant to Senate Bill No. 5352 (building code council fee increase). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.~~

~~(35))~~ (32) The appropriations in this section reflect a reduction of \$504,000 from the general fund—state appropriation for fiscal year 2003. To implement this reduction, the office of trade and economic development shall take actions consistent with its mission, goals, and objectives to reduce operating costs. Such action, to the greatest extent possible, shall maintain direct payments to service providers, grants to other entities, and other pass-through funds. Examples of actions that may be taken to effect this reduction include hiring freezes, employee furloughs, staffing reductions, restricted travel and training, delaying purchases of equipment, and limiting personal service contracts.

~~(((36))~~ (33) \$40,000 of the general fund—state appropriation for fiscal year 2003 is provided solely to implement the state task force on funding for community-based services to victims of crime as provided in Senate Bill No. 6763. If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

~~(((37))~~ (34) The appropriations in this section reflect a reduction of \$1,641,000 from the general fund—state appropriation for fiscal year 2003. To implement this reduction, the office of community development shall take actions consistent with its mission, goals, and objectives to reduce operating costs. Such action, to the greatest extent possible, shall maintain direct payments to service providers, grants to other entities, and other pass-through funds. Examples of actions that may be taken to effect this reduction include hiring freezes, employee furloughs, staffing reductions, restricted travel and training, delaying purchases of equipment, and limiting personal service contracts.

Sec. 108. 2002 c 371 s 127 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT

General Fund—State Appropriation (FY 2002).....	\$12,456,000
General Fund—State Appropriation (FY 2003).....	(\$12,508,000)
	<u>\$12,488,000</u>
General Fund—Federal Appropriation.....	(\$23,657,000)
	<u>\$35,657,000</u>
Violence Reduction and Drug Enforcement	
Account—State Appropriation	\$226,000
State Auditing Services Revolving	
Account—State Appropriation	\$25,000
TOTAL APPROPRIATION	(\$48,872,000)
	<u>\$60,852,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The office of financial management shall review policies and procedures regarding purchasing of information technology upgrades by state agencies. Information technology upgrades include replacement workstations, network equipment, operating systems and application software. The review shall document existing policies and procedures, and shall compare alternative upgrade policies that reduce the overall cost to state government for maintaining adequate information technology to meet the existing business needs of state agencies. Findings and recommendations from this review shall be reported to appropriate committees of the legislature by December 1, 2001.

(2) State agencies that provide services to other state agencies are expected to reduce their expenditures and to share the savings with their clients. The office of financial management shall achieve a reduction of \$339,000 in its billings for financial system services purchased by state agencies in fiscal year 2003. The reduction is expected to result from both reduced demand for services and reduced rates.

(3) \$500,000 of the general fund—state appropriation for fiscal year 2003 is provided solely for implementation of Engrossed Second Substitute House Bill No. 2671 (permit assistance center). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

(4) \$350,000 of the general fund—state appropriation for fiscal year 2003 is provided solely for an assessment and performance scoring of state agencies and separate systemwide performance audits of two governmental functions: State capital construction practices and state contracting practices.

(a) The scorecard on state agencies shall include, but not be limited to, the following:

- (i) Quality and process management practices;
- (ii) Independent and internal audit functions;
- (iii) Internal and external customer satisfaction;
- (iv) Program effectiveness;
- (v) Fiscal productivity and efficiency; and
- (vi) Statutory and regulatory compliance.

Each agency shall be graded on the categories selected for the scorecard. The office of financial management shall submit the results of the performance scoring, forward recommendations for legislation to the governor and the

appropriate committees of the legislature by November 30, 2002, and release the results of the performance scoring to the public.

(b)(i) The office of financial management shall conduct separate systemwide performance audits on the state's capital construction and contracting practices using generally accepted government auditing standards. Each performance audit shall include, but not be limited to, a review of the following:

- (A) Validity and reliability of management's performance measures;
- (B) A review of internal controls and internal audits;
- (C) The adequacy of systems used for measuring, reporting, and monitoring performance;
- (D) The extent to which legislative, regulatory, and organizational goals and objectives are being achieved; and
- (E) Identification and recognition of best practices.

(ii) The performance audit on state capital construction practices shall include building projects, highway projects, and architectural and engineering services. The following state agencies, at a minimum, shall be subject to audit sampling: Department of transportation, department of general administration, and state higher education agencies.

(iii) The performance audit on state contracting practices shall include state agencies with sufficient activity with personal services contracts and other types of contracts to evaluate the state's contracting practices.

(iv) The office of financial management shall grade the results of the performance audits to indicate agencies' performance regarding capital construction and contracting practices. The office of financial management shall report findings from the performance audits to the governor and appropriate legislative committees by November 30, 2002.

(c) The office of financial management may contract for consulting services in completing requirements under this subsection.

Sec. 109. 2002 c 371 s 128 (uncodified) is amended to read as follows:

FOR THE OFFICE OF ADMINISTRATIVE HEARINGS

Administrative Hearings Revolving Account—State

Appropriation	((\$22,394,000))
	<u>\$23,473,000</u>

Sec. 110. 2002 c 371 s 132 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON HISPANIC AFFAIRS

General Fund—State Appropriation (FY 2002)	\$226,000
General Fund—State Appropriation (FY 2003)	((\$210,000))
	<u>\$215,000</u>
TOTAL APPROPRIATION	((\$436,000))
	<u>\$441,000</u>

Sec. 111. 2002 c 371 s 133 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON AFRICAN-AMERICAN AFFAIRS

General Fund—State Appropriation (FY 2002)	\$211,000
General Fund—State Appropriation (FY 2003)	((\$207,000))
	<u>\$212,000</u>
TOTAL APPROPRIATION	((\$418,000))

\$423,000

Sec. 112. 2002 c 371 s 135 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF RETIREMENT SYSTEMS—
OPERATIONS**

Dependent Care Administrative Account—State

Appropriation \$378,000

Department of Retirement Systems Expense Account—

State Appropriation ~~(\$49,183,000)~~

\$49,044,000

TOTAL APPROPRIATION ~~(\$49,561,000)~~

\$49,422,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,000,000 of the department of retirement systems expense account appropriation is provided solely for support of the information systems project known as the electronic document image management system.

(2) \$120,000 of the department of retirement systems expense account appropriation is provided solely for locating inactive members entitled to retirement benefits.

(3) \$117,000 of the department of retirement systems expense account appropriation is provided solely for modifications to the retirement information systems to accommodate tracking of postretirement employment on an hourly basis.

(4) \$440,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of Engrossed Senate Bill No. 5143 (Washington state patrol retirement systems plan 2).

(5) \$6,420,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of public employees' retirement system plan 3 (chapter 247, Laws of 2000).

(6) \$96,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of Senate Bill No. 6376 (PERS plan 3 transfer payment). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

~~(7) (\$9,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of Senate Bill No. 6377 (TRS plan 1 extended school year). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.~~

~~(8))~~ (8)) \$12,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of Senate Bill No. 6378 (LEOFF plan 2 part-time leave of absence). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

~~((9))~~ (9) \$122,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of Senate Bill No. 6379 (transferring service credit to WSPRS). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

~~((10))~~ (10) \$651,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of Engrossed

Senate Bill No. 6380 (survivor benefits). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

~~((H))~~ (10) \$53,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of Senate Bill No. 638I (PERS plan 1 terminated vested). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

~~((I2))~~ \$130,000 of the department of retirement systems expense account appropriation for fiscal year 2003 is provided solely for the implementation of House Bill No. 2896 (EMT service credit transfer). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

~~((3))~~ (11) The appropriations in this section are reduced to reflect savings resulting from a 0.01 percent reduction of the department of retirement systems administrative expense rate, effective May 1, 2002, from 0.23 to 0.22 for the remainder of the 2001-03 biennium.

Sec. 113. 2002 c 371 s 137 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF REVENUE

General Fund—State Appropriation (FY 2002)	(\$72,823,000)
	<u>\$72,820,000</u>
General Fund—State Appropriation (FY 2003)	(\$78,149,000)
	<u>\$77,118,000</u>
Timber Tax Distribution Account—State	
Appropriation	\$5,131,000
Waste Education/Recycling/Litter Control—State	
Appropriation	\$101,000
State Toxics Control Account—State	
Appropriation	\$67,000
Oil Spill Administration Account—State	
Appropriation	\$14,000
Multimodal Transportation Account—State	
Appropriation	(\$109,000)
	<u>\$9,000</u>
TOTAL APPROPRIATION	(\$156,394,000)
	<u>\$155,260,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$269,000 of the general fund—state appropriation for fiscal year 2002 and \$49,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to establish and provide staff support to a committee on taxation to study the elasticity, equity, and adequacy of the state's tax system.

(a) The committee shall consist of eleven members. The department shall appoint six academic scholars from the fields of economics, taxation, business administration, public administration, public policy, and other relevant disciplines as determined by the department, after consulting with the majority and minority leaders in the senate, the co-speakers in the house of representatives, the chair of the ways and means committee in the senate, and the co-chairs of the finance committee in the house of representatives. The governor and the chairs of the majority and minority caucuses in each house of the legislature shall each appoint one member to the committee. These

appointments may be legislative members. The members of the committee shall either elect a voting chair from among their membership or a nonvoting chair who is not a member of the committee. Members of the committee shall serve without compensation but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(b) The purpose of the study is to determine how well the current tax system functions and how it might be changed to better serve the citizens of the state in the twenty-first century. In reviewing options for changes to the tax system, the committee shall develop multiple alternatives to the existing tax system. To the extent possible, the alternatives shall be designed to increase the harmony between the tax system of this state and the surrounding states, encourage commerce and business creation, and encourage home ownership. In developing alternatives, the committee shall examine and consider the effects of tax incentives, including exemptions, deferrals, and credits. The alternatives shall range from incremental improvements in the current tax structure to complete replacement of the tax structure. In conducting the study, the committee shall examine the tax structures of other states and review previous studies regarding tax reform in this state. In developing alternatives, the committee shall be guided by administrative simplicity, economic neutrality, fairness, stability, and transparency. Most of the alternatives presented by the committee to the legislature shall be revenue neutral and contain no income tax.

(c) The department shall create an advisory group to include, but not be limited to, representatives of business, state agencies, local governments, labor, taxpayers, and other advocacy groups. The group shall provide advice and assistance to the committee.

(d) The committee shall present a final report of its findings and alternatives to the ways and means committee in the senate and the finance committee in the house of representatives by November 30, 2002.

~~((3) \$109,000))~~ (2) \$9,000 of the multimodal transportation account—state appropriation for fiscal year 2003 is provided solely for the department to implement the provisions of House Bill No. 2969 (transportation). If the bill is not enacted by January 1, 2003, the amount provided in this subsection shall lapse. Further, the amount provided in this subsection shall lapse to the extent that funds are provided for this purpose in the transportation appropriations act.

Sec. 114. 2002 c 371 s 139 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF GENERAL ADMINISTRATION

General Fund—State Appropriation (FY 2002)	\$549,000
General Fund—State Appropriation (FY 2003)	((655,000))
	<u>\$646,000</u>
General Fund—Federal Appropriation	\$1,930,000
General Fund—Private/Local Appropriation	\$223,000
State Capitol Vehicle Parking Account—	
State Appropriation	\$154,000
General Administration Services Account—State	
Appropriation	\$39,546,000
TOTAL APPROPRIATION	((43,057,000))
	<u>\$43,048,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall conduct a review of the ultimate purchasing system to evaluate the following: (a) The degree to which program objectives and assumptions were achieved; (b) the degree to which planned schedule of phases, tasks, and activities were accomplished; (c) an assessment of estimated and actual costs of each phase; (d) an assessment of project cost recovery/cost avoidance, return on investment, and measurable outcomes as each relate to the agency's business functions and other agencies' business functions; and (e) the degree to which integration with the agency and state information technology infrastructure was achieved. The department will receive written input from participating pilot agencies that describes measurable organizational benefits and cost avoidance opportunities derived from use of the ultimate purchasing system. The performance review shall be submitted to the office of financial management and the appropriate legislative fiscal committees by July 1, 2002.

(2) \$60,000 of the general administration services account appropriation is provided solely for costs associated with the development of the information technology architecture to link the risk management information system and the tort division's case management system, and the reconciliation of defense cost reimbursement information.

(3) \$44,000 of the general fund—state appropriation for fiscal year 2003 is provided solely for the department to implement the waste management and recycling provisions of Substitute House Bill No. 2308 (encouraging recycling and waste reduction). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

(4) State agencies that provide services to other state agencies are expected to reduce their expenditures and to share the savings with their clients. The department of general administration shall achieve a reduction of \$1,302,000 in its billings for motor pool, consolidated mail, and other services that state agencies purchase in fiscal year 2003. The reduction is expected to result from both reduced demand for services and reduced rates.

(5) Beginning on the effective date of this act, the department of general administration shall not purchase or lease any additional automobiles for the state motor pool, unless the director of general administration determines that the purchase or lease is necessary for the safety of state personnel.

Sec. 115. 2002 c 371 s 143 (uncodified) is amended to read as follows:

FOR THE LIQUOR CONTROL BOARD

General Fund—State Appropriation (FY 2002)	\$1,483,000
General Fund—State Appropriation (FY 2003)	\$1,439,000
General Fund—Federal Appropriation (FY 2003)	\$99,000
Liquor Control Board Construction and Maintenance	
Account—State Appropriation	\$9,684,000
Liquor Revolving Account—State	
Appropriation	(((\$125,927,000))
	<u>\$126,407,000</u>
TOTAL APPROPRIATION	(((\$138,632,000))
	<u>\$139,112,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,573,000 of the liquor revolving account appropriation is provided solely for the agency information technology upgrade. This amount provided in this subsection is conditioned upon satisfying the requirements of section 902 of this act.

(2) \$4,803,000 of the liquor revolving account appropriation is provided solely for the costs associated with the development and implementation of a merchandising business system. Expenditures of any funds for this system are conditioned upon the approval of the merchandising business system's feasibility study by the information services board. The amount provided in this subsection is also conditioned upon satisfying the requirements of section 902 of this act.

(3) \$84,000 of the liquor control board construction and maintenance account appropriation for fiscal year 2003 is provided solely for the liquor control board to employ additional staff during the holiday season to handle the expected increase in sales volume at the Seattle distribution center.

Sec. 116. 2002 c 371 s 145 (uncodified) is amended to read as follows:

FOR THE MILITARY DEPARTMENT

General Fund—State Appropriation (FY 2002)	\$9,165,000
General Fund—State Appropriation (FY 2003)	(\$8,710,000)
	<u>\$8,740,000</u>
General Fund—Federal Appropriation	(\$22,509,000)
	<u>\$28,003,000</u>
General Fund—Private/Local Appropriation	\$234,000
Enhanced 911 Account—State Appropriation	\$20,269,000
Disaster Response Account—State Appropriation	(\$2,010,000)
	<u>\$1,531,000</u>
Disaster Response Account—Federal Appropriation	(\$6,510,000)
	<u>\$3,243,000</u>
Worker and Community Right to Know Fund—State Appropriation	\$283,000
Nisqually Earthquake Account—State Appropriation	(\$29,027,000)
	<u>\$24,101,000</u>
Nisqually Earthquake Account—Federal Appropriation	(\$49,641,000)
	<u>\$48,153,000</u>
TOTAL APPROPRIATION	(\$148,358,000)
	<u>\$143,722,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) ~~(\$1,906,000)~~ \$1,427,000 of the disaster response account—state appropriation is provided solely for the state share of response and recovery costs associated with federal emergency management agency (FEMA) disasters approved in the 1999-01 biennium budget. The military department may, upon approval of the director of financial management, use portions of the disaster response account—state appropriation to offset costs of new disasters occurring before June 30, 2003. The military department shall submit a report quarterly to

the office of financial management and the legislative fiscal committees detailing disaster costs, including: (a) Estimates of total costs; (b) incremental changes from the previous estimate; (c) actual expenditures; (d) estimates of total remaining costs to be paid; and (d) estimates of future payments by biennium. This information shall be displayed by individual disaster, by fund, and by type of assistance. The military department shall also submit a report quarterly to the office of financial management and the legislative fiscal committees detailing information on the disaster response account, including: (a) The amount and type of deposits into the account; (b) the current available fund balance as of the reporting date; and (c) the projected fund balance at the end of the 2001-03 biennium based on current revenue and expenditure patterns.

(2) \$100,000 of the general fund—state fiscal year 2002 appropriation and \$100,000 of the general fund—state fiscal year 2003 appropriation are provided solely for implementation of the conditional scholarship program pursuant to chapter 28B.103 RCW.

(3) \$60,000 of the general fund—state appropriation for fiscal year 2002 and \$60,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of Senate Bill No. 5256 (emergency management compact). If the bill is not enacted by June 30, 2001, the amounts provided in this subsection shall lapse.

(4) \$35,000 of the general fund—state fiscal year 2002 appropriation and \$35,000 of the general fund—state fiscal year 2003 appropriation are provided solely for the north county emergency medical service.

(5) (~~(\$2,145,000)~~) \$1,967,000 of the Nisqually earthquake account—state appropriation and (~~(\$4,174,000)~~) \$3,305,000 of the Nisqually earthquake account—federal appropriation are provided solely for the military department's costs associated with coordinating the state's response to the February 28, 2001, earthquake.

(6) (~~(\$678,000)~~) \$641,000 of the Nisqually earthquake account—state appropriation and (~~(\$3,420,000)~~) \$3,797,000 of the Nisqually earthquake account—federal appropriation are provided solely for mitigation costs associated with the earthquake for state and local agencies. Of the amount from the Nisqually earthquake account—state appropriation, (~~(\$217,000)~~) \$227,000 is provided for the state matching share for state agencies and (~~(\$462,000)~~) \$414,000 is provided for one-half of the local matching share for local entities. The amount provided for the local matching share constitutes a revenue distribution for purposes of RCW 43.135.060(1).

(7) (~~(\$8,970,000)~~) \$10,493,000 of the Nisqually earthquake account—state appropriation and (~~(\$42,047,000)~~) \$41,051,000 of the Nisqually earthquake account—federal appropriation are provided solely for public assistance costs associated with the earthquake for state and local agencies. Of the amount from the Nisqually earthquake account—state appropriation, (~~(\$3,924,000)~~) \$5,237,000 is provided for the state matching share for state agencies and (~~(\$5,046,000)~~) \$5,256,000 is provided for one-half of the local matching share for local entities. The amount provided for the local matching share constitutes a revenue distribution for purposes of RCW 43.135.060(1).

(8) (~~(\$17,234,000)~~) \$11,000,000 of the Nisqually earthquake account—state appropriation is provided solely to cover other response and recovery costs associated with the Nisqually earthquake that are not eligible for federal

emergency management agency reimbursement. Prior to expending funds provided in this subsection, the military department shall obtain prior approval of the director of financial management. Prior to approving any single project of over \$1,000,000, the office of financial management shall notify the fiscal committees of the legislature. The military department is to submit a quarterly report detailing the costs authorized under this subsection to the office of financial management and the legislative fiscal committees.

(9) \$2,818,000 of the enhanced 911 account—state appropriation is provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 6034 or House Bill No. 2595 (enhanced 911 excise tax). If neither bill is enacted by June 30, 2002, the amount provided in this subsection shall lapse.

PART II HUMAN SERVICES

Sec. 201. 2002 c 371 s 201 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES.

(1) Appropriations made in this act to the department of social and health services shall initially be allotted as required by this act. Subsequent allotment modifications shall not include transfers of moneys between sections of this act except as expressly provided in this act, nor shall allotment modifications permit moneys that are provided solely for a specified purpose to be used for other than that purpose, except as expressly provided in subsection (3) of this section.

(2) The department of social and health services shall not initiate any services that will require expenditure of state general fund moneys unless expressly authorized in this act or other law. The department may seek, receive, and spend, under RCW 43.79.260 through 43.79.282, federal moneys not anticipated in this act as long as the federal funding does not require expenditure of state moneys for the program in excess of amounts anticipated in this act. If the department receives unanticipated unrestricted federal moneys, those moneys shall be spent for services authorized in this act or in any other legislation providing appropriation authority, and an equal amount of appropriated state general fund moneys shall lapse. Upon the lapsing of any moneys under this subsection, the office of financial management shall notify the legislative fiscal committees. As used in this subsection, "unrestricted federal moneys" includes block grants and other funds that federal law does not require to be spent on specifically defined projects or matched on a formula basis by state funds.

(3)(a) The appropriations to the department of social and health services in this act shall be expended for the programs and in the amounts specified in this act. However, after May 1, 2002, unless specifically prohibited by this act, the department may transfer general fund—state appropriations for fiscal year 2002 among programs after approval by the director of financial management; and after May 1, 2003, the department may transfer general fund—state appropriations for fiscal year 2003 among programs after such approval. However, the department shall not transfer state moneys that are provided solely for a specified purpose except as expressly provided in subsection (3)(b) of this section.

(b) To the extent that transfers under subsection (3)(a) of this section are insufficient to fund actual expenditures in excess of fiscal year 2002 or fiscal year 2003 caseload forecasts and utilization assumptions in the medical assistance, long-term care, foster care, adoption support, and child support programs, the department may transfer state moneys that are provided solely for a specified purpose after approval by the director of financial management.

(c) The director of financial management shall notify the appropriate fiscal committees of the senate and house of representatives in writing prior to approving any allotment modifications.

(4) In the event the department receives additional unrestricted federal funds or achieves savings in excess of that anticipated in this act, the department shall use up to \$5,000,000 of such funds to initiate a pilot project providing integrated support services to homeless individuals needing mental health services, alcohol or substance abuse treatment, medical care, or who demonstrate community safety concerns. Before such a pilot project is initiated, the department shall notify the fiscal committees of the legislature of the plans for such a pilot project including the source of funds to be used.

*Sec. 202. 2002 c 371 s 202 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
CHILDREN AND FAMILY SERVICES PROGRAM**

General Fund—State Appropriation (FY 2002)	\$225,104,000
<i>General Fund—State Appropriation (FY 2003)</i>	(\$231,042,000)
	<u>\$227,238,000</u>
General Fund—Federal Appropriation	(\$369,403,000)
	<u>\$376,136,000</u>
General Fund—Private/Local Appropriation	\$400,000
Public Safety and Education Account—	
State Appropriation	\$964,000
Violence Reduction and Drug Enforcement Account—	
State Appropriation	\$5,639,000
TOTAL APPROPRIATION	(\$832,552,000)
	<u>\$835,481,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,237,000 of the fiscal year 2002 general fund—state appropriation, \$2,271,000 of the fiscal year 2003 general fund—state appropriation, and \$1,584,000 of the general fund—federal appropriation are provided solely for the category of services titled "intensive family preservation services."

(2) \$685,000 of the general fund—state fiscal year 2002 appropriation and \$701,000 of the general fund—state fiscal year 2003 appropriation are provided to contract for the operation of one pediatric interim care facility. The facility shall provide residential care for up to thirteen children through two years of age. Seventy-five percent of the children served by the facility must be in need of special care as a result of substance abuse by their mothers. The facility shall also provide on-site training to biological, adoptive, or foster parents. The facility shall provide at least three months of consultation and support to parents accepting placement of children from the facility. The facility may recruit new

and current foster and adoptive parents for infants served by the facility. The department shall not require case management as a condition of the contract.

(3) \$524,000 of the general fund—state fiscal year 2002 appropriation, \$375,000 of the general fund—state fiscal year 2003 appropriation, and \$161,000 of the general fund—federal appropriation are provided for up to three nonfacility-based programs for the training, consultation, support, and recruitment of biological, foster, and adoptive parents of children through age three in need of special care as a result of substance abuse by their mothers, except that each program may serve up to three medically fragile nonsubstance-abuse-affected children. In selecting nonfacility-based programs, preference shall be given to programs whose federal or private funding sources have expired or that have successfully performed under the existing pediatric interim care program.

(4) \$1,260,000 of the fiscal year 2002 general fund—state appropriation, \$1,248,000 of the fiscal year 2003 general fund—state appropriation, and \$4,150,000 of the violence reduction and drug enforcement account appropriation are provided solely for the family policy council and community public health and safety networks. The funding level for the family policy council and community public health and safety networks represents a 25 percent reduction below the funding level for the 1999-2001 biennium. Funding levels shall be reduced 25 percent for both the family policy council and network grants. Reductions to network grants shall be allocated so as to maintain current funding levels, to the greatest extent possible, for projects with the strongest evidence of positive outcomes and for networks with substantial compliance with contracts for network grants.

(5) \$2,215,000 of the fiscal year 2002 general fund—state appropriation, \$4,394,000 of the fiscal year 2003 general fund—state appropriation, and \$5,604,000 of the general fund—federal appropriation are provided solely for reducing the average caseload level per case-carrying social worker. Average caseload reductions are intended to increase the amount of time social workers spend in direct contact with the children, families, and foster parents involved with their open cases. The department shall use some of the funds provided in several local offices to increase staff that support case-carrying social workers in ways that will allow social workers to increase direct contact time with children, families, and foster parents. To achieve the goal of reaching an average caseload ratio of 1:24 by the end of fiscal year 2003, the department shall develop a plan for redeploying 30 FTEs to case-carrying social worker and support positions from other areas in the children and family services budget. The FTE redeployment plan shall be submitted to the fiscal committees of the legislature by December 1, 2001.

(6) \$1,000,000 of the fiscal year 2002 general fund—state appropriation and \$1,000,000 of the fiscal year 2003 general fund—state appropriation are provided solely for increasing foster parent respite care services that improve the retention of foster parents and increase the stability of foster placements. The department shall report quarterly to the appropriate committees of the legislature progress against appropriate baseline measures for foster parent retention and stability of foster placements.

(7) \$1,050,000 of the general fund—federal appropriation is provided solely for increasing kinship care placements for children who otherwise would likely

be placed in foster care. These funds shall be used for extraordinary costs incurred by relatives at the time of placement, or for extraordinary costs incurred by relatives after placement if such costs would likely cause a disruption in the kinship care placement. \$50,000 of the funds provided shall be contracted to the Washington institute for public policy to conduct a study of kinship care placements. The study shall examine the prevalence and needs of families who are raising related children and shall compare services and policies of Washington state with other states that have a higher rate of kinship care placements in lieu of foster care placements. The study shall identify possible changes in services and policies that are likely to increase appropriate kinship care placements.

(8) \$3,386,000 of the fiscal year 2002 general fund—state appropriation, \$5,710,000 of the fiscal year 2003 general fund—state appropriation, and \$19,819,000 of the general fund—federal appropriation are provided solely for increases in the cost per case for foster care and adoption support. \$16,000,000 of the general fund—federal amount shall remain unallotted until the office of financial management approves a plan submitted by the department to achieve a higher rate of federal earnings in the foster care program. That plan shall also be submitted to the fiscal committees of the legislature and shall indicate projected federal revenue compared to actual fiscal year 2001 levels. Within the amounts provided for foster care, the department shall increase the basic rate for foster care to an average of \$420 per month on July 1, 2001. The department shall use the remaining funds provided in this subsection to pay for increases in the cost per case for foster care and adoption support. The department shall seek to control rate increases and reimbursement decisions for foster care and adoption support cases such that the cost per case for family foster care, group care, receiving homes, and adoption support does not exceed the amount assumed in the projected caseload expenditures plus the amounts provided in this subsection. By April 2003, the department shall adjust adoption support benefits to account for the availability of the new federal adoption support tax credit for special needs children.

(9) \$1,767,000 of the general fund—state appropriation for fiscal year 2002, \$1,767,000 of the general fund—state appropriation for fiscal year 2003, and \$1,241,000 of the general fund—federal appropriation are provided solely for rate and capacity increases for child placing agencies. Child placing agencies shall increase their capacity by 15 percent in fiscal year 2002.

(10) The department shall provide secure crisis residential facilities across the state in a manner that: (a) Retains geographic provision of these services; and (b) retains beds in high use areas.

(11) \$125,000 of the general fund—state appropriation for fiscal year 2002 and \$125,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for a foster parent retention program. This program is directed at foster parents caring for children who act out sexually, as described in House Bill No. 1525 (foster parent retention program).

*Sec. 202 was partially vetoed. See message at end of chapter.

Sec. 203. 2002 c 371 s 203 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
JUVENILE REHABILITATION PROGRAM**

General Fund—State Appropriation (FY 2002) \$83,151,000

General Fund—State Appropriation (FY 2003)	(\$79,107,000)
	<u>\$78,281,000</u>
General Fund—Federal Appropriation	(\$13,803,000)
	<u>\$13,645,000</u>
General Fund—Private/Local Appropriation	\$1,110,000
Juvenile Accountability Incentive	
Account—Federal Appropriation	\$10,461,000
Public Safety and Education	
Account—State Appropriation	\$6,047,000
Violence Reduction and Drug Enforcement Account—	
State Appropriation	\$37,174,000
TOTAL APPROPRIATION	(\$230,853,000)
	<u>\$229,869,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(1) \$686,000 of the violence reduction and drug enforcement account appropriation is provided solely for deposit in the county criminal justice assistance account for costs to the criminal justice system associated with the implementation of chapter 338, Laws of 1997 (juvenile code revisions). The amounts provided in this subsection are intended to provide funding for county adult court costs associated with the implementation of chapter 338, Laws of 1997 and shall be distributed in accordance with RCW 82.14.310.

(2) \$5,980,000 of the violence reduction and drug enforcement account appropriation is provided solely for the implementation of chapter 338, Laws of 1997 (juvenile code revisions). The amounts provided in this subsection are intended to provide funding for county impacts associated with the implementation of chapter 338, Laws of 1997 and shall be distributed to counties as prescribed in the current consolidated juvenile services (CJS) formula.

(3) \$1,161,000 of the general fund—state appropriation for fiscal year 2002, \$1,162,000 of the general fund—state appropriation for fiscal year 2003, and \$5,190,000 of the violence reduction and drug enforcement account appropriation are provided solely to implement community juvenile accountability grants pursuant to chapter 338, Laws of 1997 (juvenile code revisions). Funds provided in this subsection may be used solely for community juvenile accountability grants, administration of the grants, and evaluations of programs funded by the grants.

(4) \$2,515,000 of the violence reduction and drug enforcement account appropriation is provided solely to implement alcohol and substance abuse treatment programs for locally committed offenders. The juvenile rehabilitation administration shall award these moneys on a competitive basis to counties that submitted a plan for the provision of services approved by the division of alcohol and substance abuse. The juvenile rehabilitation administration shall develop criteria for evaluation of plans submitted and a timeline for awarding funding and shall assist counties in creating and submitting plans for evaluation.

(5) \$100,000 of the general fund—state appropriation for fiscal year 2002 and \$100,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for juvenile rehabilitation administration to contract with the

institute for public policy for responsibilities assigned in chapter 338, Laws of 1997 (juvenile code revisions).

(6) \$100,000 of the general fund—state appropriation for fiscal year 2002 and \$100,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for a contract for expanded services of the teamchild project.

(7) \$423,000 of the general fund—state appropriation for fiscal year 2002, \$754,100 of the general fund—state appropriation for fiscal year 2003, \$152,000 of the general fund—federal appropriation, \$172,000 of the public safety and education assistance account appropriation, and \$604,000 of the violence reduction and drug enforcement account appropriation are provided solely to increase payment rates for contracted service providers.

(8) \$16,000 of the general fund—state appropriation for fiscal year 2002 and \$16,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of chapter 167, Laws of 1999 (firearms on school property). The amounts provided in this subsection are intended to provide funding for county impacts associated with the implementation of chapter 167, Laws of 1999, and shall be distributed to counties as prescribed in the current consolidated juvenile services (CJS) formula.

(9) \$3,441,000 of the general fund—state appropriation for fiscal year 2002 and \$3,441,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for distribution to county juvenile court administrators to fund the costs of processing truancy, children in need of services, and at-risk youth petitions. The department shall not retain any portion of these funds to cover administrative or any other departmental costs. The department, in conjunction with the juvenile court administrators, shall develop an equitable funding distribution formula. The formula shall neither reward counties with higher than average per-petition processing costs nor shall it penalize counties with lower than average per-petition processing costs.

(10) \$6,000,000 of the public safety and education account—state appropriation is provided solely for distribution to county juvenile court administrators to fund the costs of processing truancy, children in need of services, and at-risk youth petitions. The department shall not retain any portion of these funds to cover administrative or any other departmental costs. The department, in conjunction with the juvenile court administrators, shall develop an equitable funding distribution formula. The formula shall neither reward counties with higher than average per-petition processing costs nor shall it penalize counties with lower than average per-petition processing costs.

(11) The distributions made under (9) and (10) of this subsection and distributions from the county criminal justice assistance account made pursuant to section 801 of this act constitute appropriate reimbursement for costs for any new programs or increased level of service for purposes of RCW 43.135.060.

(12) Each quarter during the 2001-03 fiscal biennium, each county shall report the number of petitions processed and the total actual costs of processing the petitions in each of the following categories: Truancy, children in need of services, and at-risk youth. Counties shall submit the reports to the department no later than 45 days after the end of the quarter. The department shall forward this information to the chair and ranking minority member of the house of representatives appropriations committee and the senate ways and means

committee no later than 60 days after a quarter ends. These reports are deemed informational in nature and are not for the purpose of distributing funds.

(13) \$1,692,000 of the juvenile accountability incentive account—federal appropriation is provided solely for the continued implementation of a pilot program to provide for postrelease planning and treatment of juvenile offenders with co-occurring disorders.

(14) \$22,000 of the violence reduction and drug enforcement account appropriation is provided solely for the evaluation of the juvenile offender co-occurring disorder pilot program implemented pursuant to (m) of this subsection.

(15) \$900,000 of the general fund—state appropriation for fiscal year 2002 and \$900,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the continued implementation of the juvenile violence prevention grant program established in section 204, chapter 309, Laws of 1999.

(16) \$33,000 of the general fund—state appropriation for fiscal year 2002 and \$29,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of House Bill No. 1070 (juvenile offender basic training). If the bill is not enacted by June 30, 2001, the amounts provided in this subsection shall lapse.

(17) \$21,000 of the general fund—state appropriation for fiscal year 2002 and \$42,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of Senate Bill No. 5468 (chemical dependency). If the bill is not enacted by June 30, 2001, the amounts provided in this subsection shall lapse.

(18) The juvenile rehabilitation administration, in consultation with the juvenile court administrators, may agree on a formula to allow the transfer of funds among amounts appropriated for consolidated juvenile services, community juvenile accountability act grants, the chemically dependent disposition alternative, and the special sex offender disposition alternative.

(19) \$40,000 of the general fund—state appropriation for fiscal year 2002 and \$68,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to increase payment rates for contracted service providers.

(20) \$945,000 of the general fund—state appropriation for fiscal year 2003 is provided solely for providing additional research-based services to the juvenile parole population. The juvenile rehabilitation administration shall consult with the institute for public policy in deciding which interventions to provide to the parole population.

(21) The juvenile rehabilitation administration shall continue to allot and expend funds provided in this section by the category and budget unit structure submitted to the legislative evaluation and accountability program committee.

Sec. 204. 2002 c 371 s 204 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
MENTAL HEALTH PROGRAM**

(1) COMMUNITY SERVICES/REGIONAL SUPPORT NETWORKS

General Fund—State Appropriation (FY 2002)	\$194,566,000
General Fund—State Appropriation (FY 2003)	(\$177,206,000)
	<u>\$179,547,000</u>
General Fund—Federal Appropriation	(\$358,377,000)

	<u>\$360,727,000</u>
General Fund—Local Appropriation	\$25,596,000
Health Services Account—State Appropriation	\$2,450,000
TOTAL APPROPRIATION	((\$758,195,000))
	<u>\$762,886,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) Regional support networks shall use portions of the general fund—state appropriation for implementation of working agreements with the vocational rehabilitation program which will maximize the use of federal funding for vocational programs.

(b) From the general fund—state appropriations in this subsection, the secretary of social and health services shall assure that regional support networks reimburse the aging and adult services program for the general fund—state cost of medicaid personal care services that enrolled regional support network consumers use because of their psychiatric disability.

(c) \$388,000 of the general fund—state appropriation for fiscal year 2002, \$2,829,000 of the general fund—state appropriation for fiscal year 2003, and \$3,157,000 of the general fund—federal appropriation are provided solely for development and operation of community residential and support services for persons whose treatment needs constitute substantial barriers to community placement and who no longer require active psychiatric treatment at an inpatient hospital level of care, no longer meet the criteria for inpatient involuntary commitment, and who are clinically ready for discharge from a state psychiatric hospital. In the event that enough patients are not transitioned or diverted from the state hospitals to close at least two hospital wards by July 2002, and four additional wards by April 2003, a proportional share of these funds shall be transferred to the appropriations in subsection (2) of this section to support continued care of the patients in the state hospitals. Primary responsibility and accountability for provision of appropriate community support for persons placed with these funds shall reside with the mental health program and the regional support networks, with partnership and active support from the alcohol and substance abuse and from the aging and adult services programs. The department shall negotiate performance-based incentive contracts to provide appropriate community support services for individuals leaving the state hospitals under this subsection. The department shall first seek to contract with regional support networks before offering a contract to any other party. The funds appropriated in this subsection shall not be considered "available resources" as defined in RCW 71.24.025 and are not subject to the standard allocation formula applied in accordance with RCW 71.24.035(13)(a).

(d) At least \$1,000,000 of the federal block grant funding appropriated in this subsection shall be used for (i) initial development, training, and operation of the community support teams which will work with long-term state hospital residents prior and subsequent to their return to the community; and (ii) development of support strategies which will reduce the unnecessary and excessive use of state and local hospitals for short-term crisis stabilization services. Such strategies may include training and technical assistance to

community long-term care and substance abuse providers; the development of diversion beds and stabilization support teams; examination of state hospital policies regarding admissions; and the development of new contractual standards to assure that the statutory requirement that 85 percent of short-term detentions be managed locally is being fulfilled. The department shall report to the fiscal and policy committees of the legislature on the results of these efforts by November 1, 2001, and again by November 1, 2002.

(e) The department is authorized to implement a new formula for allocating available resources among the regional support networks. The distribution formula shall use the number of persons eligible for the state medical programs funded under chapter 74.09 RCW as the measure of the requirement for the number of acutely mentally ill, chronically mentally ill, severely emotionally disturbed children, and seriously disturbed in accordance with RCW 71.24.035(13)(a). The new formula shall be phased in over a period of no less than six years. Furthermore, the department shall increase the medicaid capitation rates which a regional support network would otherwise receive under the formula by an amount sufficient to assure that total funding allocated to the regional support network in fiscal year 2002 increases by up to 3.5 percent over the amount actually paid to that regional support network in fiscal year 2001, and by up to an additional 5.0 percent in fiscal year 2003, if total funding to the regional support network would otherwise increase by less than those percentages under the new formula, and provided that the nonfederal share of the higher medicaid payment rate is provided by the regional support network from local funds.

(f) Within funds appropriated in this subsection, the department shall contract with the Clark county regional support network for development and operation of a project demonstrating collaborative methods for providing intensive mental health services in the school setting for severely emotionally disturbed children who are medicaid eligible. Project services are to be delivered by teachers and teaching assistants who qualify as, or who are under the supervision of, mental health professionals meeting the requirements of chapter 275-57 WAC. The department shall increase medicaid payments to the regional support network by the amount necessary to cover the necessary and allowable costs of the demonstration, not to exceed the upper payment limit specified for the regional support network in the department's medicaid waiver agreement with the federal government after meeting all other medicaid spending requirements assumed in this subsection. The regional support network shall provide the department with (i) periodic reports on project service levels, methods, and outcomes; and (ii) an intergovernmental transfer equal to the state share of the increased medicaid payment provided for operation of this project.

(g) The health services account appropriation is provided solely for implementation of strategies which the department and the affected regional support networks conclude will best assure continued availability of community-based inpatient psychiatric services in all areas of the state. Such strategies may include, but are not limited to, emergency contracts for continued operation of inpatient facilities otherwise at risk of closure because of demonstrated uncompensated care; start-up grants for development of evaluation and treatment facilities; and increases in the rate paid for inpatient psychiatric

services for medically indigent and/or general assistance for the unemployed patients. The funds provided in this subsection must be: (i) Prioritized for use in those areas of the state which are at greatest risk of lacking sufficient inpatient psychiatric treatment capacity, rather than being distributed on a formula basis; (ii) prioritized for use by those hospitals which do not receive low-income disproportionate share hospital payments as of the date of application for funding; and (iii) matched on a one-quarter local, three-quarters state basis by funding from the regional support network or networks in the area in which the funds are expended. Payments from the amount provided in this subsection shall not be made to any provider that has not agreed that, except for prospective rate increases, the payment shall offset, on a dollar-for-dollar basis, any liability that may be established against, or any settlement that may be agreed to by the state, regarding the rate of state reimbursement for inpatient psychiatric care. The funds provided in this subsection shall not be considered "available resources" as defined in RCW 71.24.025 and are not subject to the distribution formula established pursuant to RCW 71.24.035.

((+)) (h) The department shall assure that each regional support network increases spending on direct client services in fiscal years 2002 and 2003 by at least the same percentage as the total state, federal, and local funds allocated to the regional support network in those years exceeds the amounts allocated to it in fiscal year 2001.

((+)) (i) The department shall reduce state funding otherwise payable to a regional support network in fiscal years 2002 and 2003 by the full amount by which the regional support network's reserves and fund balances as of December 31, 2001, exceed the required risk reserve for that regional support network. The required reserve amount shall be calculated by applying the risk reserve percentage specified in the department's contract with the regional support network to the total state and federal revenues for which the regional support network would otherwise be eligible in accordance with this subsection. As used in this subsection, "reserves" does not include capital project reserves established in accordance with state accounting and reporting standards before January 1, 2002.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2002)	\$84,878,000
General Fund—State Appropriation (FY 2003)	(\$80,784,000)
	<u>\$88,187,000</u>
General Fund—Federal Appropriation	(\$139,821,000)
	<u>\$134,120,000</u>
General Fund—Private/Local Appropriation	(\$29,532,000)
	<u>\$29,680,000</u>
TOTAL APPROPRIATION	(\$335,015,000)
	<u>\$336,865,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The state mental hospitals may use funds appropriated in this subsection to purchase goods and supplies through hospital group purchasing organizations when it is cost-effective to do so.

(b) The mental health program at Western state hospital shall continue to use labor provided by the Tacoma prerelease program of the department of corrections.

(c) The department shall seek to reduce the census of the two state psychiatric hospitals by 178 beds by April 2003 by arranging and providing community residential, mental health, and other support services for long-term state hospital patients whose treatment needs constitute substantial barriers to community placement and who no longer require active psychiatric treatment at an inpatient hospital level of care, no longer meet the criteria for inpatient involuntary commitment, and who are clinically ready for discharge from a state psychiatric hospital. No such patient is to move from the hospital until a team of community professionals has become familiar with the person and their treatment plan; assessed their strengths, preferences, and needs; arranged a safe, clinically-appropriate, and stable place for them to live; assured that other needed medical, behavioral, and social services are in place; and is contracted to monitor the person's progress on an ongoing basis. The department and the regional support networks shall endeavor to assure that hospital patients are able to return to their area of origin, and that placements are not concentrated in proximity to the hospitals.

(d) For each month subsequent to the month in which a state hospital bed has been closed in accordance with (c) of this subsection, the mental health program shall transfer to the medical assistance program state funds equal to the state share of the monthly per capita expenditure amount estimated for categorically needy-disabled persons in the most recent forecast of medical assistance expenditures.

(e) The department shall report to the appropriate committees of the legislature by November 1, 2001, and by November 1, 2002, on its plans for and progress toward achieving the objectives set forth in (c) of this subsection.

(3) CIVIL COMMITMENT

General Fund—State Appropriation (FY 2002)	\$18,267,000
General Fund—State Appropriation (FY 2003)	((\$20,934,000))
	<u>\$21,320,000</u>
TOTAL APPROPRIATION	((\$39,201,000))
	<u>\$39,587,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) \$1,587,000 of the general fund—state appropriation for fiscal year 2002 and \$2,646,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for operational costs associated with a less restrictive step-down placement facility on McNeil Island.

(b) \$300,000 of the general fund—state appropriation for fiscal year 2002 and \$300,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for mitigation funding for jurisdictions affected by the placement of less restrictive alternative facilities for persons conditionally released from the special commitment center facility being constructed on McNeil Island. Of this amount, up to \$45,000 per year is provided for the city of Lakewood for police protection reimbursement at Western State Hospital and adjacent areas, up to \$45,000 per year is provided for training police personnel

on chapter 12, Laws of 2001, 2nd sp. sess. (3ESSB 6151), up to \$125,000 per year is provided for Pierce county for reimbursement of additional costs, and the remaining amounts are for other documented costs by jurisdictions directly impacted by the placement of the secure community transition facility on McNeil Island. Pursuant to chapter 12, Laws of 2001, 2nd sp. sess. (3ESSB 6151), the department shall continue to work with local jurisdictions towards reaching agreement for mitigation costs.

(c) By October 1, 2001, the department shall report to the office of financial management and the fiscal committees of the house of representatives and senate detailing information on plans for increasing the efficiency of staffing patterns at the new civil commitment center facility being constructed on McNeil Island.

(d) \$600,000 of the general fund—state appropriation for fiscal year 2003 is provided solely for the implementation of Substitute Senate Bill No. 6594 (secure community transition facilities). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

(4) SPECIAL PROJECTS

General Fund—State Appropriation (FY 2002)	\$444,000
General Fund—State Appropriation (FY 2003)	\$443,000
General Fund—Federal Appropriation	\$2,082,000
TOTAL APPROPRIATION	\$2,969,000

(5) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2002)	\$3,104,000
General Fund—State Appropriation (FY 2003)	(\$3,111,000)
	<u>\$4,527,000</u>
General Fund—Federal Appropriation	(\$5,659,000)
	<u>\$7,077,000</u>
TOTAL APPROPRIATION	(\$11,874,000)
	<u>\$14,708,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) \$113,000 of the general fund—state appropriation for fiscal year 2002, \$125,000 of the general fund—state appropriation for fiscal year 2003, and \$164,000 of the general fund—federal appropriation are provided solely for the institute for public policy to evaluate the impacts of chapter 214, Laws of 1999 (mentally ill offenders), chapter 217, Laws of 2000 (atypical anti-psychotic medications), chapter 297, Laws of 1998 (commitment of mentally ill persons), and chapter 334, Laws of 2001 (mental health performance audit).

(b) \$168,000 of the general fund—state appropriation for fiscal year 2002, \$243,000 of the general fund—state appropriation for fiscal year 2003, and \$411,000 of the general fund—federal appropriation are provided solely for the development and implementation of a uniform outcome-oriented performance measurement system to be used in evaluating and managing the community mental health service delivery system consistent with the recommendations contained in the joint legislative audit and review committee's audit of the public mental health system. Once implemented, the use of performance measures will allow comparison of measurement results to established standards and benchmarks among regional support networks, service providers, and against

other states. The department shall provide a report to the appropriate committees of the legislature on the development and implementation of the use of performance measures by October 2002.

(c) \$125,000 of the general fund—state appropriation for fiscal year 2002, \$125,000 of the general fund—state appropriation for fiscal year 2003, and \$250,000 of the general fund—federal appropriation are provided solely for a study of the prevalence of mental illness among the state's regional support networks. The study shall examine how reasonable estimates of the prevalence of mental illness relate to the incidence of persons enrolled in medical assistance programs in each regional support network area. In conducting this study, the department shall consult with the joint legislative audit and review committee, regional support networks, community mental health providers, and mental health consumer representatives. The department shall submit a final report on its findings to the fiscal, health care, and human services committees of the legislature by November 1, 2003.

Sec. 205. 2002 c 371 s 205 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
DEVELOPMENTAL DISABILITIES PROGRAM**

(1) COMMUNITY SERVICES

General Fund—State Appropriation (FY 2002)	\$233,705,000
General Fund—State Appropriation (FY 2003)	(\$255,415,000)
	<u>\$250,654,000</u>
General Fund—Federal Appropriation	(\$405,773,000)
	<u>\$400,311,000</u>
Health Services Account—State	
Appropriation	\$903,000
TOTAL APPROPRIATION	(\$895,796,000)
	<u>\$885,573,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) ~~((b) \$10,050,000 of the fiscal year 2003 general fund state appropriation and \$3,550,000 of the general fund federal appropriation are provided solely for expanded access to community services. A total of \$7,800,000 is provided for additional residential services for persons on the home and community based waiver. A total of \$3,600,000 is provided for family support and high school transition. A total of \$2,700,000 is provided between this subsection and subsection (3) of this section for staffing and other costs to improve oversight of quality of care, program management, and fiscal management.))~~ New funding for family support and high school transition along with a portion of existing funding for these programs shall be provided as supplemental security income (SSI) state supplemental payments. The legislature finds that providing cash assistance to individuals and families needing these supports promotes self-determination and independence. It is the intent of the legislature that the department shall comply with federal requirements to maintain aggregate funding for SSI state supplemental payments while promoting self-determination and independence for persons with developmental disabilities in families with taxable incomes at or below 150

percent of median family income. Individuals receiving family support or high school transition payments shall not become eligible for medical assistance under RCW 74.09.510 due solely to the receipt of SSI state supplemental payments. ~~((These amounts and the specified expansion of community services are intended to be the fiscal component of the negotiated settlement in the pending litigation on developmental disabilities services, *ARC v. Quasim*.~~

~~(e))~~ (b) The health services account appropriation and \$904,000 of the general fund—federal appropriation are provided solely for health care benefits for home care workers with family incomes below 200 percent of the federal poverty level who are employed through state contracts for twenty hours per week or more. Premium payments for individual provider home care workers shall be made only to the subsidized basic health plan. Home care agencies may obtain coverage either through the basic health plan or through an alternative plan with substantially equivalent benefits.

~~((d))~~ (c) \$902,000 of the general fund—state appropriation for fiscal year 2002, ~~(\$3,372,000)~~ \$2,274,000 of the general fund—state appropriation for fiscal year 2003, and ~~(\$4,056,000)~~ \$3,011,000 of the general fund—federal appropriation are provided solely for community services for residents of residential habilitation centers (RHCs) who are able to be adequately cared for in community settings and who choose to live in those community settings. The department shall ensure that the average cost per day for all program services other than start-up costs shall not exceed \$280. If the number and timing of residents choosing to move into community settings is not sufficient to achieve the RHC cottage consolidation plan assumed in the appropriations in subsection (2) of this section, the department shall transfer sufficient appropriations from this subsection to subsection (2) of this section to cover the added costs incurred in the RHCs. The department shall report to the appropriate committees of the legislature, within 45 days following each fiscal year quarter, the number of residents moving into community settings and the actual expenditures for all community services to support those residents.

~~((e))~~ (d) \$1,153,000 of the general fund—state appropriation for fiscal year 2002, \$3,054,000 of the general fund—state appropriation for fiscal year 2003, and \$4,031,000 of the general fund—federal appropriation are provided solely for expanded community services for persons with developmental disabilities who also have community protection issues or are diverted or discharged from state psychiatric hospitals. The department shall ensure that the average cost per day for all program services other than start-up costs shall not exceed \$275. The department shall report to the appropriate committees of the legislature, within 45 days following each fiscal year quarter, the number of persons served with these additional community services, where they were residing, what kinds of services they were receiving prior to placement, and the actual expenditures for all community services to support these clients.

~~((f))~~ (e) The department shall not increase total enrollment in home and community based waivers for persons with developmental disabilities except for changes assumed in additional funding provided in subsections ~~((b), (d), and (e))~~ (c) and (d) of this section. Prior to submitting to the health care financing authority any additional home and community based waiver request for persons with developmental disabilities, the department shall submit a summary of the waiver request to the appropriate committees of the legislature. The summary

shall include eligibility criteria, program description, enrollment projections and limits, and budget and cost effectiveness projections that distinguish the requested waiver from other existing or proposed waivers.

~~((g))~~ (f) \$1,000,000 of the general fund—state appropriation for fiscal year 2002 and \$1,000,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for employment, or other day activities and training programs, for young adults with developmental disabilities who complete their high school curriculum in 2001 or 2002. These services are intended to assist with the transition to work and more independent living. Funding shall be used to the greatest extent possible for vocational rehabilitation services matched with federal funding. In recent years, the state general fund appropriation for employment and day programs has been underspent. These surpluses, built into the carry forward level budget, shall be redeployed for high school transition services.

~~((h))~~ (g) \$369,000 of the fiscal year 2002 general fund—state appropriation and \$369,000 of the fiscal year 2003 general fund—state appropriation are provided solely for continuation of the autism pilot project started in 1999.

~~((i))~~ (h) \$4,049,000 of the general fund—state appropriation for fiscal year 2002, \$1,734,000 of the general fund—state appropriation for fiscal year 2003, and \$5,369,000 of the general fund—federal appropriation are provided solely to increase compensation by an average of fifty cents per hour for low-wage workers providing state-funded services to persons with developmental disabilities. These funds, along with funding provided for vendor rate increases, are sufficient to raise wages an average of fifty cents and cover the employer share of unemployment and social security taxes on the amount of the wage increase. In consultation with the statewide associations representing such agencies, the department shall establish a mechanism for testing the extent to which funds have been used for this purpose, and report the results to the fiscal committees of the legislature by February 1, 2002.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2002)	\$69,375,000
General Fund—State Appropriation (FY 2003)	(\$68,203,000)
	<u>\$68,914,000</u>
General Fund—Federal Appropriation	(\$145,672,000)
	<u>\$146,495,000</u>
General Fund—Private/Local Appropriation	\$11,230,000
TOTAL APPROPRIATION	(\$294,480,000)
	<u>\$296,014,000</u>

The appropriations in this subsection are subject to the following conditions and limitations: Pursuant to RCW 71A.12.160, if residential habilitation center capacity is not being used for permanent residents, the department shall make residential habilitation center vacancies available for respite care and any other services needed to care for clients who are not currently being served in a residential habilitation center and whose needs require staffing levels similar to current residential habilitation center residents. Providing respite care shall not impede the department's ability to consolidate cottages, and maintain

expenditures within allotments, as assumed in the appropriations in this subsection.

(3) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2002)	\$1,711,000
General Fund—State Appropriation (FY 2003)	(\$2,007,000)
	<u>\$3,088,000</u>
General Fund—Federal Appropriation	(\$2,612,000)
	<u>\$3,421,000</u>
Telecommunications Devices for the Hearing and Speech Impaired Account Appropriation	\$1,767,000
TOTAL APPROPRIATION	(\$8,097,000)
	<u>\$9,987,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) \$270,000 of the fiscal year 2003 general fund—state appropriation and \$170,000 of the general fund—federal appropriation are provided solely for improved fiscal management of the home and community-based waiver and other community services.

(b) \$100,000 of the telecommunications devices for the hearing and speech impaired account appropriation is provided solely for increasing the contract amount for the southeast Washington deaf and hard of hearing services center due to increased workload.

(4) SPECIAL PROJECTS

General Fund—Federal Appropriation	\$11,995,000
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Sec. 206. 2002 c 371 s 206 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
AGING AND ADULT SERVICES PROGRAM**

General Fund—State Appropriation (FY 2002)	\$505,983,000
General Fund—State Appropriation (FY 2003)	(\$513,154,000)
	<u>\$513,676,000</u>
General Fund—Federal Appropriation	(\$1,053,299,000)
	<u>\$1,052,943,000</u>
General Fund—Private/Local Appropriation	(\$11,803,000)
	<u>\$11,387,000</u>
Health Services Account—State Appropriation	(\$4,523,000)
	<u>\$5,087,000</u>
TOTAL APPROPRIATION	(\$2,088,762,000)
	<u>\$2,089,076,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The entire health services account appropriation, \$1,210,000 of the general fund—state appropriation for fiscal year 2002, ~~(\$1,423,000)~~ \$1,458,000 of the general fund—state appropriation for fiscal year 2003, and ~~(\$6,794,000)~~ \$7,346,000 of the general fund—federal appropriation are provided solely for health care benefits for home care workers who are

employed through state contracts for at least twenty hours per week. Premium payments for individual provider home care workers shall be made only to the subsidized basic health plan, and only for persons with incomes below 200 percent of the federal poverty level. Home care agencies may obtain coverage either through the basic health plan or through an alternative plan with substantially equivalent benefits.

(2) \$1,706,000 of the general fund—state appropriation for fiscal year 2002 and \$1,706,000 of the general fund—state appropriation for fiscal year 2003, plus the associated vendor rate increase for each year, are provided solely for operation of the volunteer chore services program.

(3) For purposes of implementing chapter 74.46 RCW, the weighted average nursing facility payment rate shall be no more than \$128.79 for fiscal year 2002, and no more than (~~(\$132.58)~~) \$131.57 for fiscal year 2003. For all facilities, the therapy care, support services, and operations component rates established in accordance with chapter 74.46 RCW shall be adjusted for economic trends and conditions by 2.1 percent effective July 1, 2001, and by an additional 1.5 percent effective July 1, 2002. For case-mix facilities, direct care component rates established in accordance with chapter 74.46 RCW shall also be adjusted for economic trends and conditions by 2.1 percent effective July 1, 2001, and by an additional 2.3 percent effective July 1, 2002. Additionally, to facilitate the transition to a fully case-mix based direct care payment system, the median price per case-mix unit for each of the applicable direct care peer groups shall be increased on a one-time basis by 2.64 percent effective July 1, 2002.

(4) In accordance with Substitute House Bill No. 2242 (nursing home rates), the department shall issue certificates of capital authorization which result in up to \$10 million of increased asset value completed and ready for occupancy in fiscal year 2003; in up to \$27 million of increased asset value completed and ready for occupancy in fiscal year 2004; and in up to \$27 million of increased asset value completed and ready for occupancy in fiscal year 2005.

(5) Adult day health services shall not be considered a duplication of services for persons receiving care in long-term care settings licensed under chapter 18.20, 72.36, or 70.128 RCW.

(6) Within funds appropriated in this section and in section 204 of this act, the aging and adult services program shall coordinate with and actively support the efforts of the mental health program and of the regional support networks to provide stable community living arrangements for persons with dementia and traumatic brain injuries who have been long-term residents of the state psychiatric hospitals. The aging and adult services program shall report to the health care and fiscal committees of the legislature by November 1, 2001, and by November 1, 2002, on the actions it has taken to achieve this objective.

(7) Within funds appropriated in this section and in section 204 of this act, the aging and adult services program shall devise and implement strategies in partnership with the mental health program and the regional support networks to reduce the use of state and local psychiatric hospitals for the short-term stabilization of persons with dementia and traumatic brain injuries. Such strategies may include training and technical assistance to help long-term care providers avoid and manage behaviors which might otherwise result in psychiatric hospitalizations; monitoring long-term care facilities to assure residents are receiving appropriate mental health care and are not being

inappropriately medicated or hospitalized; the development of diversion beds and stabilization support teams; and the establishment of systems to track the use of psychiatric hospitals by long-term care providers. The aging and adult services program shall report to the health care and fiscal committees of the legislature by November 1, 2001, and by November 1, 2002, on the actions it has taken to achieve this objective.

(8) In accordance with Substitute House Bill No. 1341, the department may implement a medicaid waiver program for persons who do not qualify for such services as categorically needy, subject to federal approval and the following conditions and limitations:

(a) The waiver program shall include coverage of care in community residential facilities. Enrollment in the waiver shall not exceed 50 persons by the end of fiscal year 2002, nor 600 persons by the end of fiscal year 2003.

(b) For each month of waiver service delivered to a person who was not covered by medicaid prior to their enrollment in the waiver, the aging and adult services program shall transfer to the medical assistance program state and federal funds equal to the monthly per capita expenditure amount, net of drug rebates, estimated for medically needy-aged persons in the most recent forecast of medical assistance expenditures.

(c) The department shall identify the number of medically needy nursing home residents, and enrollment and expenditures on the medically needy waiver, on monthly management reports.

(d) The department shall track and report to health care and fiscal committees of the legislature by November 15, 2002, on the types of long-term care support a sample of waiver participants were receiving prior to their enrollment in the waiver, how those services were being paid for, and an assessment of their adequacy.

(9) \$50,000 of the general fund—state appropriation for fiscal year 2002 and \$50,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for payments to any nursing facility licensed under chapter 18.51 RCW which meets all of the following criteria: (a) The nursing home entered into an arm's length agreement for a facility lease prior to January 1, 1980; (b) the lessee purchased the leased nursing home after January 1, 1980; and (c) the lessor defaulted on its loan or mortgage for the assets of the home after January 1, 1991, and prior to January 1, 1992. Payments provided pursuant to this subsection shall not be subject to the settlement, audit, or rate-setting requirements contained in chapter 74.46 RCW.

(10) \$364,000 of the general fund—state appropriation for fiscal year 2002, \$364,000 of the general fund—state appropriation for fiscal year 2003, and \$740,000 of the general fund—federal appropriation are provided solely for payment of exceptional care rates so that persons with Alzheimer's disease and related dementias who might otherwise require nursing home or state hospital care can instead be served in boarding home-licensed facilities which specialize in the care of such conditions.

(11) From funds appropriated in this section, the department shall increase compensation for individual and for agency home care providers. Payments to individual home care providers are to be increased from \$7.18 per hour to \$7.68 per hour on July 1, 2001. Payments to agency providers are to be increased to \$13.30 per hour on July 1, 2001, and to \$13.44 per hour on July 1, 2002. All but

18 cents per hour of the July 1, 2001, increase to agency providers is to be used to increase wages for direct care workers. The appropriations in this section also include the funds needed for the employer share of unemployment and social security taxes on the amount of the wage increase required by this subsection.

(12) \$2,507,000 of the general fund—state appropriation for fiscal year 2002, \$2,595,000 of the general fund—state appropriation for fiscal year 2003, and \$5,100,000 of the general fund—federal appropriation are provided solely for prospective rate increases intended to increase compensation by an average of fifty cents per hour for low-wage workers in agencies which contract with the state to provide community residential services for persons with functional disabilities. In consultation with the statewide associations representing such agencies, the department shall establish a mechanism for testing the extent to which funds have been used for this purpose, and report the results to the fiscal committees of the legislature by February 1, 2002. The amounts in this subsection also include the funds needed for the employer share of unemployment and social security taxes on the amount of the wage increase.

(13) \$1,082,000 of the general fund—state appropriation for fiscal year 2002, \$1,082,000 of the general fund—state appropriation for fiscal year 2003, and \$2,204,000 of the general fund—federal appropriation are provided solely for prospective rate increases intended to increase compensation for low-wage workers in nursing homes which contract with the state. For fiscal year 2002, the department shall add forty-five cents per patient day to the direct care rate which would otherwise be paid to each nursing facility in accordance with chapter 74.46 RCW. For fiscal year 2003, the department shall increase the median price per case-mix unit for each of the applicable peer groups by six-tenths of one percent in order to distribute the available funds. In consultation with the statewide associations representing nursing facilities, the department shall establish a mechanism for testing the extent to which funds have been used for this purpose, and report the results to the fiscal committees of the legislature by February 1, 2002, and by December 1, 2002.

Sec. 207. 2002 c 371 s 207 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
ECONOMIC SERVICES PROGRAM**

General Fund—State Appropriation (FY 2002)	\$442,984,000
General Fund—State Appropriation (FY 2003)	(\$394,974,000)
	<u>\$406,972,000</u>
General Fund—Federal Appropriation	(\$1,359,505,000)
	<u>\$1,363,821,000</u>
General Fund—Private/Local Appropriation	\$33,880,000
TOTAL APPROPRIATION	(\$2,231,343,000)
	<u>\$2,247,657,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$281,035,000 of the general fund—state appropriation for fiscal year 2002, ~~(\$277,231,000)~~ \$281,089,000 of the general fund—state appropriation for fiscal year 2003, ~~(\$1,254,197,000)~~ \$1,258,165,000 of the general fund—federal appropriation, and \$31,444,000 of the general fund—local appropriation are provided solely for the WorkFirst program and child support operations.

WorkFirst expenditures include TANF grants, diversion services, subsidized child care, employment and training, other WorkFirst related services, allocated field services operating costs, and allocated economic services program administrative costs. Within the amounts provided in this subsection, the department shall:

(a) Continue to implement WorkFirst program improvements that are designed to achieve progress against outcome measures specified in RCW 74.08A.410. Valid outcome measures of job retention and wage progression shall be developed and reported quarterly to appropriate fiscal and policy committees of the legislature for families who leave assistance, measured after 12 months, 24 months, and 36 months. An increased attention to job retention and wage progression is necessary to emphasize the legislature's goal that the WorkFirst program succeed in helping recipients gain long-term economic independence and not cycle on and off public assistance. The wage progression measure shall report the median percentage increase in quarterly earnings and hourly wage after 12 months, 24 months, and 36 months. The wage progression report shall also report the percent with earnings above one hundred percent and two hundred percent of the federal poverty level. The report shall compare former WorkFirst participants with similar workers who did not participate in WorkFirst. The department shall also report the percentage of families who have returned to temporary assistance for needy families after 12 months, 24 months, and 36 months.

(b) Develop informational materials that educate families about the difference between cash assistance and work support benefits. These materials must explain, among other facts, that the benefits are designed to support their employment, that there are no time limits on the receipt of work support benefits, and that immigration or residency status will not be affected by the receipt of benefits. These materials shall be posted in all community service offices and distributed to families. Materials must be available in multiple languages. When a family leaves the temporary assistance for needy families program, receives cash diversion assistance, or withdraws a temporary assistance for needy families application, the department of social and health services shall educate them about the difference between cash assistance and work support benefits and offer them the opportunity to begin or to continue receiving work support benefits, so long as they are eligible. The department shall provide this information through in-person interviews, over the telephone, and/or through the mail. Work support benefits include food stamps, medicaid for all family members, medicaid or state children's health insurance program for children, and child care assistance. The department shall report annually to the legislature the number of families who have had exit interviews, been reached successfully by phone, and been sent mail. The report shall also include the percentage of families who elect to continue each of the benefits and the percentage found ineligible by each substantive reason code. A substantive reason code shall not be "other." The report shall identify barriers to informing families about work support benefits and describe existing and future actions to overcome such barriers.

(c) From the amounts provided in this subsection, provide \$50,000 from the general fund—state appropriation for fiscal year 2002 and \$50,000 from the

general fund—state appropriation for fiscal year 2003 to the Washington institute for public policy for continuation of the WorkFirst evaluation database.

(d) Submit a report by December 1, 2001, to the fiscal committees of the legislature containing a spending plan for the WorkFirst program. The plan shall identify how spending levels in the 2001-2003 biennium will be adjusted by June 30, 2003, to be sustainable within available federal grant levels and the carryforward level of state funds.

(2) \$54,623,000 of the general fund—state appropriation for fiscal year 2002 and (~~(\$44,431,000)~~) \$51,147,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for cash assistance and other services to recipients in the general assistance—unemployable program. Within these amounts, the department may expend funds for services that assist recipients to reduce their dependence on public assistance, provided that expenditures for these services and cash assistance do not exceed the funds provided.

(3) \$5,632,000 of the general fund—state appropriation for fiscal year 2002 and (~~(\$4,032,000)~~) \$6,852,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the food assistance program for legal immigrants. The level of benefits shall be equivalent to the benefits provided by the federal food stamp program.

(4) \$48,000 of the general fund—state appropriation for fiscal year 2002 is provided solely to implement chapter 111, Laws of 2001 (veterans/Philippines).

(5) The department shall apply the provisions of RCW 74.04.005(10) to simplify resource eligibility policy, make such policy consistent with other federal public assistance programs, and achieve the budgetary savings assumed in this section.

(6) It is the intent of the legislature that the department shall comply with federal requirements to maintain aggregate funding for supplemental security income (SSI) supplemental payments. Within the amount remaining in this section, SSI supplemental payments shall be used for current SSI recipients who have ineligible spouses.

(7) \$311,000 of the fiscal year 2003 general fund—state appropriation and \$255,000 of the general fund—federal appropriation are provided solely for the department to: (a) Increase and improve efforts to verify that children and pregnant women are in fact eligible for the medical assistance services they receive; and (b) review their continued eligibility for medical assistance services every six months. The improved income verification efforts shall be implemented no later than April 1, 2003, and shall include review of recipient documentation and employer contacts to verify that the income declared by applicants and recipients is accurate. These efforts will be supplemented by electronic records checks that will be in place by July 1, 2003. The six-month rather than annual review of continued eligibility is to be implemented no later than November 2003. All administrative rules, guidelines, and procedures; staffing levels and training; and changes to electronic systems necessary to implement the six-month review of continued eligibility shall be in place as required to timely implement the six-month reviews beginning November 2003.

(8) In reviewing the budget for the division of child support, the legislature has conducted a review of the Washington state child support schedule, chapter 26.19 RCW, and supporting documentation as required by federal law. The legislature concludes that the application of the support schedule continues to

result in the correct amount of child support to be awarded. No further changes will be made to the support schedule or the economic table at this time.

Sec. 208. 2002 c 371 s 208 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
ALCOHOL AND SUBSTANCE ABUSE PROGRAM**

General Fund—State Appropriation (FY 2002)	\$35,851,000
General Fund—State Appropriation (FY 2003)	(\$37,022,000)
	<u>\$36,548,000</u>
General Fund—Federal Appropriation	(\$91,549,000)
	<u>\$91,539,000</u>
General Fund—Private/Local Appropriation	\$723,000
Public Safety and Education Account—State Appropriation	\$13,427,000
Violence Reduction and Drug Enforcement Account— State Appropriation	\$52,306,000
TOTAL APPROPRIATION	(\$230,878,000)
	<u>\$230,394,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$810,000 of the general fund—state appropriation for fiscal year 2002 and \$1,622,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for expansion of 35 drug and alcohol treatment beds for persons committed under RCW 70.96A.140. Patients meeting the commitment criteria of RCW 70.96A.140 but who voluntarily agree to treatment in lieu of commitment shall also be eligible for treatment in these additional treatment beds. The department shall develop specific placement criteria for these expanded treatment beds to ensure that this new treatment capacity is prioritized for persons incapacitated as a result of chemical dependency and who are also high utilizers of hospital services. These additional treatment beds shall be located in the eastern part of the state.

(2) \$1,000,000 of the public safety and education account—state appropriation is provided solely for expansion of treatment for persons gravely disabled by abuse and addiction to alcohol and other drugs including methamphetamine.

(3) \$1,083,000 of the public safety and education account—state appropriation and \$75,000 of the violence reduction and drug enforcement account—state appropriation are provided solely for adult and juvenile drug courts that have a net loss of federal grant funding in state fiscal year 2002 and state fiscal year 2003. This appropriation is intended to cover approximately one-half of lost federal funding.

(4) \$1,993,000 of the public safety and education account—state appropriation and \$951,000 of the general fund—federal appropriation are provided solely for drug and alcohol treatment for SSI clients. The department shall continue research and post-program evaluation of these clients to further determine the post-treatment utilization of medical services and the service effectiveness of consolidation.

(5) \$500,000 of the violence reduction and drug enforcement account appropriation for fiscal year 2003 is provided solely for the department to

provide treatment for pathological gambling or training for the treatment of pathological gambling under Second Substitute Senate Bill No. 6560 (shared game lottery). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

(6) Within the amounts appropriated in this section, funding is provided to implement Second Substitute House Bill No. 2338 or Substitute Senate Bill No. 6361 (drug offender sentencing).

Sec. 209. 2002 c 371 s 209 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
MEDICAL ASSISTANCE PROGRAM**

General Fund—State Appropriation (FY 2002)	\$1,081,150,000
General Fund—State Appropriation (FY 2003)	(\$1,124,758,000)
	<u>\$1,202,277,000</u>
General Fund—Federal Appropriation	(\$3,621,077,000)
	<u>\$3,319,133,000</u>
General Fund—Private/Local Appropriation	(\$211,272,000)
	<u>\$216,735,000</u>
Emergency Medical Services and Trauma Care Systems	
Trust Account—State Appropriation	(\$9,200,000)
	<u>\$10,700,000</u>
Health Services Account—State Appropriation	(\$1,104,119,000)
	<u>\$720,236,000</u>
TOTAL APPROPRIATION	(\$7,151,576,000)
	<u>\$6,550,231,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall increase its efforts to restrain the growth of health care costs. The appropriations in this section anticipate that the department implements a combination of cost containment and utilization strategies sufficient to reduce general fund—state costs by approximately 3 percent below the level projected for the 2001-03 biennium in the March 2001 forecast. The department shall report to the fiscal committees of the legislature by October 1, 2001, on its specific plans and semiannual targets for accomplishing these savings. The department shall report again to the fiscal committees by March 1, 2002, and by September 1, 2002, on actual performance relative to the semiannual targets. If satisfactory progress is not being made to achieve the targeted savings, the reports shall include recommendations for additional or alternative measures to control costs.

(2) The department shall continue to extend medicaid eligibility to children through age 18 residing in households with incomes below 200 percent of the federal poverty level.

(3) In determining financial eligibility for medicaid-funded services, the department is authorized to disregard recoveries by Holocaust survivors of insurance proceeds or other assets, as defined in RCW 48.104.030.

(4) \$502,000 of the health services account appropriation, \$400,000 of the general fund—private/local appropriation, and \$1,676,000 of the general fund—federal appropriation are provided solely for implementation of Second Substitute House Bill No. 1058 (breast and cervical cancer treatment). If the bill

is not enacted by June 30, 2001, or if private funding is not contributed equivalent to the general fund—private/local appropriation, the funds appropriated in this subsection shall lapse.

(5) \$620,000 of the health services account appropriation for fiscal year 2002, (~~(\$1,380,000)~~) \$337,000 of the health services account appropriation for fiscal year 2003, and (~~(\$2,000,000)~~) \$960,000 of the general fund—federal appropriation are provided solely for implementation of a "ticket to work" medicaid buy-in program for working persons with disabilities, operated in accordance with the following conditions:

(a) To be eligible, a working person with a disability must have total income which is less than 450 percent of poverty;

(b) Participants shall participate in the cost of the program by paying (i) a monthly enrollment fee equal to fifty percent of any unearned income in excess of the medicaid medically needy standard; and (ii) a monthly premium equal to 5 percent of all unearned income, plus 5 percent of all earned income after disregarding the first sixty-five dollars of monthly earnings, and half the remainder;

(c) The department shall establish more restrictive eligibility standards than specified in this subsection to the extent necessary to operate the program within appropriated funds;

(d) The department may require point-of-service copayments as appropriate, except that copayments shall not be so high as to discourage appropriate service utilization, particularly of prescription drugs needed for the treatment of psychiatric conditions; and

(e) The department shall establish systems for tracking and reporting enrollment and expenditures in this program, and the prior medical assistance eligibility status of new program enrollees. The department shall additionally survey the prior and current employment status and approximate hours worked of program enrollees, and report the results to the fiscal and health care committees of the legislature by January 15, 2003.

(6) From funds appropriated in this section, the department shall design, implement, and evaluate pilot projects to assist individuals with at least three different diseases to improve their health, while reducing total medical expenditures. The projects shall involve (a) identifying persons who are seriously or chronically ill due to a combination of medical, social, and functional problems; and (b) working with the individuals and their care providers to improve adherence to state-of-the-art treatment regimens. The department shall report to the health care and the fiscal committees of the legislature by January 1, 2002, on the particular disease states, intervention protocols, and delivery mechanisms it proposes to test.

(7) Sufficient funds are appropriated in this section for the department to continue full-scope dental coverage, vision coverage, and podiatry services for medicaid-eligible adults.

(8) The legislature reaffirms that it is in the state's interest for Harborview medical center to remain an economically viable component of the state's health care system.

(9) \$80,000 of the general fund—state appropriation for fiscal year 2002, \$80,000 of the general fund—state appropriation for fiscal year 2003, and \$160,000 of the general fund—federal appropriation are provided solely for the

newborn referral program to provide access and outreach to reduce infant mortality.

(10) \$30,000 of the general fund—state appropriation for fiscal year 2002, \$31,000 of the general fund—state appropriation for fiscal year 2003, and \$62,000 of the general fund—federal appropriation are provided solely for implementation of Substitute Senate Bill No. 6020 (dental sealants). If Substitute Senate Bill No. 6020 is not enacted by June 30, 2001, the amounts provided in this subsection shall lapse.

(11) In accordance with RCW 74.46.625, (~~(\$523,600,000)~~) \$199,111,000 of the health services account appropriation and (~~(\$530,585,000)~~) \$201,049,000 of the general fund—federal appropriation are provided solely for supplemental payments to nursing homes operated by rural public hospital districts. The payments shall be conditioned upon (a) a contractual commitment by the association of public hospital districts and participating rural public hospital districts to make an intergovernmental transfer to the state treasurer, for deposit into the health services account, equal to at least ((98)) 95 percent of the supplemental payments; and (b) a contractual commitment by the participating districts to not allow expenditures covered by the supplemental payments to be used for medicaid nursing home rate-setting. The participating districts shall retain no more than a total of \$20,000,000 for the 2001-03 biennium. If the medicare upper payment limit revenues referenced in this subsection are not received in an amount or within a time frame sufficient to support spending from the health services account, the governor shall take actions in accordance with RCW 43.88.110(8).

(12) (~~(\$38,766,000)~~) \$40,428,000 of the health services account appropriation (~~(for fiscal year 2002, \$40,494,000 of the health services account appropriation for fiscal year 2003, and \$79,839,000)~~) and \$40,807,000 of the general fund—federal appropriation are provided solely for additional disproportionate share and medicare upper payment limit payments to public hospital districts.

The payments shall be conditioned upon a contractual commitment by the participating public hospital districts to make an intergovernmental transfer to the health services account equal to at least 91 percent of the additional payments. At least 28 percent of the amounts retained by the participating hospital districts shall be allocated to the state's teaching hospitals.

(13) \$412,000 of the general fund—state appropriation for fiscal year 2002, \$862,000 of the general fund—state appropriation for fiscal year 2003, and \$730,000 of the general fund—federal appropriation are provided solely for implementation of Substitute House Bill No. 1162 (small rural hospitals). If Substitute House Bill No. 1162 is not enacted by June 30, 2001, the amounts provided in this subsection shall lapse.

(14) The department may continue to use any federal money available to continue to provide medicaid matching funds for funds contributed by local governments for purposes of conducting eligibility outreach to children and underserved groups. The department shall ensure cooperation with the anticipated audit of the school districts' matchable expenditures for this program and advise the appropriate legislative fiscal committees of the findings.

(15) The department shall coordinate with the health care authority and with community and migrant health clinics to actively assist children and immigrant adults not eligible for medicaid to enroll in the basic health plan.

(16) \$8,500,000 of the general fund—state appropriation for fiscal year 2002, or so much thereof as may be necessary, is provided solely for settlement of *Providence St. Peter's Hospital et al. vs. Department of Social and Health Services*.

(17) In consultation and coordination with the department of health, the department shall establish mechanisms to assure that the AIDS insurance program operates within budgeted levels. Such mechanisms shall include a system under which the state's contribution to the cost of coverage is adjusted on a sliding-scale basis.

(18) The department shall implement an academic detailing program that educates prescribers on the availability of generic versions of off-patent brand drugs. To the extent the net cost of generics, after accounting for rebates, is less than the off-patent drug, generics will be substituted, with the prescriber's approval, consistent with criteria developed by the department in consultation with the state medical association and the state pharmacists association.

(19) Within available resources, the department shall design and ~~((initiate))~~ report on the feasibility of a general assistance medical care management project in two counties, one in eastern Washington and one in western Washington. In designing the project, the department shall consult with the mental health division, migrant and community health centers, and any other managed care provider that has the capacity to offer coordinated medical and mental health care. The projects shall be designed in such a way that a designated provider network is established for general assistance clients so that care management can be maximized. The department shall report on the design of the pilot project to the policy and fiscal committees of the legislature by October 15, 2002.

(20) \$21,000 of the general fund—state appropriation and \$189,000 of the general fund—federal appropriation are provided solely for initiation of a study to assess alternatives for replacing the existing medicaid management information system. The department shall report to the information services board and to the fiscal committees of the legislature by December 1, 2003, on the anticipated costs and benefits of the major alternative approaches. The department shall receive specific authorization in the 2003-05 appropriations act before proceeding with procurement of the replacement system.

Sec. 210. 2002 c 371 s 210 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
VOCATIONAL REHABILITATION PROGRAM**

General Fund—State Appropriation (FY 2002)	\$11,135,000
General Fund—State Appropriation (FY 2003)	((9,385,000))
	<u>\$9,371,000</u>
General Fund—Federal Appropriation	((82,235,000))
	<u>\$82,185,000</u>
General Fund—Private/Local Appropriation	\$360,000
TOTAL APPROPRIATION	((103,115,000))
	<u>\$103,051,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The division of vocational rehabilitation shall negotiate cooperative interagency agreements with state and local organizations to improve and expand employment opportunities for people with severe disabilities.

(2) The department shall actively assist participants in the employment support services program to obtain other employment or training opportunities over the course of fiscal year 2003.

Sec. 211. 2002 c 371 s 211 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
ADMINISTRATION AND SUPPORTING SERVICES PROGRAM**

General Fund—State Appropriation (FY 2002)	\$30,419,000
General Fund—State Appropriation (FY 2003)	(\$22,419,000)
	<u>\$24,818,000</u>
General Fund—Federal Appropriation	(\$47,135,000)
	<u>\$48,157,000</u>
General Fund—Private/Local Appropriation	\$810,000
TOTAL APPROPRIATION	(\$100,783,000)
	<u>\$104,204,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) By November 1, 2001, the secretary shall report to the fiscal committees of the legislature on the actions the secretary has taken, or proposes to take, within current funding levels to resolve the organizational problems identified in the department's February 2001 report to the legislature on current systems for billing third-party payers for services delivered by the state psychiatric hospitals. The secretary is authorized to transfer funds from this section to the mental health program to the extent necessary to achieve the organizational improvements recommended in that report.

(2) By November 1, 2001, the department shall report to the fiscal committees of the legislature with the least costly plan for assuring that billing and accounting technologies in the state psychiatric hospitals adequately and efficiently comply with standards set by third-party payers. The plan shall be developed with participation by and oversight from the office of financial management, the department's information systems services division, and the department of information services.

(3) The department shall reconstitute the payment integrity program to place greater emphasis upon the prevention of future billing errors, ensure billing and administrative errors are treated in a manner distinct from allegations of fraud and abuse, and shall rename the program. In keeping with this revised focus, the department shall also increase to one thousand dollars the cumulative total of apparent billing errors allowed before a provider is contacted for repayment.

(4) By September 1, 2001, the department shall report to the fiscal committees of the legislature results from the payment review program. The report shall include actual costs recovered and estimated costs avoided for fiscal year 2001 and the costs incurred by the department to administer the program. The report shall document criteria and methodology used for determining avoided costs. In addition, the department shall seek input from health care

providers and consumer organizations on modifications to the program. The department shall provide annual updates to the report to the fiscal committees of the legislature by September 1st of each year for the preceding fiscal year.

(5) The department shall implement reductions in administrative expenditures assumed in these appropriations that achieve ongoing savings, reduce duplicative and redundant work processes, and, where possible, eliminate entire administrative functions and offices. The department may transfer amounts among sections and programs to achieve these savings provided that reductions in direct services to clients and recipients of the department shall not be counted as administrative reductions. The department shall report to the appropriate committees of the legislature a spending plan to achieve these reductions by July 1, 2002, and shall report actual achieved administrative savings and projected saving for the remainder of the biennium by December 1, 2002.

Sec. 212. 2002 c 371 s 212 (uncodified) is amended to read as follows:

FOR THE STATE HEALTH CARE AUTHORITY

General Fund—State Appropriation (FY 2002)	\$6,655,000
State Health Care Authority Administrative	
Account—State Appropriation	(\$20,032,000)
	<u>\$19,310,000</u>
Health Services Account—State Appropriation	(\$538,828,000)
	<u>\$502,278,000</u>
General Fund—Federal Appropriation	(\$4,240,000)
	<u>\$3,521,000</u>
(Medical Aid Account—State Appropriation	(\$45,000)
TOTAL APPROPRIATION	(\$569,800,000)
	<u>\$531,764,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$6,551,000 of the general fund—state appropriation for fiscal year 2002 and \$6,550,000 of the health services account—state appropriation for fiscal year 2003 are provided solely for health care services provided through local community clinics.

(2) Within funds appropriated in this section and sections 205 and 206 of this 2001 act, the health care authority shall continue to provide an enhanced basic health plan subsidy option for foster parents licensed under chapter 74.15 RCW and workers in state-funded home care programs. Under this enhanced subsidy option, foster parents and home care workers with family incomes below 200 percent of the federal poverty level shall be allowed to enroll in the basic health plan at a cost of ten dollars per covered worker per month.

(3) The health care authority shall require organizations and individuals which are paid to deliver basic health plan services and which choose to sponsor enrollment in the subsidized basic health plan to pay the following: (i) A minimum of fifteen dollars per enrollee per month for persons below 100 percent of the federal poverty level; and (ii) a minimum of twenty dollars per enrollee per month for persons whose family income is 100 percent to 125 percent of the federal poverty level.

(4) The health care authority shall solicit information from the United States office of personnel management, health plans, and other relevant sources, regarding the cost of implementation of mental health parity by the federal employees health benefits program in 2001. A progress report shall be provided to the senate and house of representatives fiscal committees by July 1, 2002, and a final report shall be provided to the legislature by November 15, 2002, on the study findings.

(5) The administrator shall take at least the following actions to assure that persons participating in the basic health plan are eligible for the level of assistance they receive: (a) Require submission of income tax returns and recent pay history from all applicants; (b) check employment security payroll records at least once every twelve months on all enrollees; (c) require enrollees whose income as indicated by payroll records exceeds that upon which their subsidy is based to document their current income as a condition of continued eligibility; (d) require enrollees for whom employment security payroll records cannot be obtained to document their current income at least once every six months; and (e) pursue repayment and civil penalties from persons who have received excessive subsidies, as provided in RCW 70.47.060(9).

~~(6) ((The health services account revenues generated by Initiative Measure No. 773 which are appropriated in this section shall be used to subsidize enrollments in excess of the 125,000 per month base enrollment level as follows:~~

~~(a) \$20,000,000 is provided solely for enrollment in the subsidized basic health plan of persons who, solely by reason of their immigration status, are not eligible for medicaid coverage of their nonemergent medical care needs. From July 2002 to October 2002, opportunities for subsidized coverage will be offered on a phased-in basis to this group of persons. Any entity or organization may sponsor subsidized basic health plan enrollment.~~

~~(b) Beginning January 1, 2003, subsidized basic health plan coverage shall be offered on a phased-in basis to an additional 20,000 enrollees.~~

~~(7)) \$3,000,000 of the health services account—state appropriation for fiscal year 2003 is provided solely to increase the number of persons not eligible for medicaid receiving dental care from nonprofit community clinics, and for interpreter services to support dental and medical services for persons for whom interpreters are not available from any other source.~~

~~((8)) (7) The health care authority shall report to the fiscal committees of the legislature on the costs, benefits, and feasibility of implementing a system no later than January 1, 2004, under which the state's contribution to the cost of employee medical coverage would be graduated according to employee salary. Under the graduated system, employees in higher salary ranges would pay a larger share of the cost of their medical coverage, while those paid lower salaries would pay a smaller percentage of their premium. The report shall be prepared in consultation with the department of personnel and the state-supported colleges and universities, and shall be submitted to the fiscal committees no later than December 1, 2002.~~

~~((9)) (8) In consultation with the department of personnel and with the state-supported colleges and universities, the health care authority shall report to the fiscal committees of the legislature by October 1, 2002, a plan for expanding the availability and use of flexible spending account plans under which employees may set aside pretax earnings to cover their out-of-pocket medical~~

costs. The authority is authorized to proceed with implementation of such a plan to the extent it can be accomplished within existing state funding levels.

~~((10) \$685,000 of the health services account appropriation, \$629,000 of the general fund federal appropriation, and the medical aid account appropriation are provided solely for implementation of Substitute Senate Bill No. 6368 (prescription drug utilization and education). If the bill is not enacted by June 30, 2002, these amounts shall lapse.))~~

(9) As of the effective date of this 2003 act, the health care authority shall admit new members to the basic health plan only to the extent authorized under the authority's September 6, 2001, administrative policy on basic health enrollment management.

Sec. 213. 2002 c 371 s 213 (uncodified) is amended to read as follows:

FOR THE HUMAN RIGHTS COMMISSION

General Fund—State Appropriation (FY 2002)	\$2,688,000
General Fund—State Appropriation (FY 2003)	(\$2,619,000)
	<u>\$2,483,000</u>
General Fund—Federal Appropriation	(\$1,544,000)
	<u>\$1,794,000</u>
General Fund—Private/Local Appropriation	\$100,000
TOTAL APPROPRIATION	(\$6,951,000)
	<u>\$7,065,000</u>

Sec. 214. 2002 c 371 s 216 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LABOR AND INDUSTRIES

General Fund—State Appropriation (FY 2002)	\$5,577,000
General Fund—State Appropriation (FY 2003)	\$5,517,000
General Fund—Federal Appropriation	\$1,250,000
Public Safety and Education Account—State Appropriation	\$18,292,000
Public Safety and Education Account—Federal Appropriation	\$6,950,000
Public Safety and Education Account—Private/Local Appropriation	(\$5,373,000)
	<u>\$4,200,000</u>
Asbestos Account—State Appropriation	\$688,000
Electrical License Account—State Appropriation	\$28,412,000
Farm Labor Revolving Account—Private/Local Appropriation	\$28,000
Worker and Community Right-to-Know Account—State Appropriation	\$2,281,000
Public Works Administration Account—State Appropriation	\$2,856,000
Accident Account—State Appropriation	\$184,219,000
Accident Account—Federal Appropriation	\$11,568,000
Medical Aid Account—State Appropriation	(\$183,666,000)
	<u>\$178,666,000</u>
Medical Aid Account—Federal Appropriation	\$2,438,000
Plumbing Certificate Account—State	

Appropriation.....	\$1,111,000
Pressure Systems Safety Account—State	
Appropriation.....	\$2,525,000
TOTAL APPROPRIATION.....	(\$462,751,000)
	<u>\$456,578,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Pursuant to RCW 7.68.015, the department shall operate the crime victims compensation program within the public safety and education account funds appropriated in this section. In the event that cost containment measures are necessary, the department may (a) institute copayments for services; (b) develop preferred provider contracts; or (c) other cost containment measures. Cost containment measures shall not include holding invoices received in one fiscal period for payment from appropriations in subsequent fiscal periods. No more than \$5,248,000 of the public safety and education account appropriation shall be expended for department administration of the crime victims compensation program.

(2) It is the intent of the legislature that elevator inspection fees shall fully cover the cost of the elevator inspection program. Pursuant to RCW 43.135.055, during the 2001-03 fiscal biennium the department may increase fees in excess of the fiscal growth factor, if the increases are necessary to fully fund the cost of the elevator inspection program.

(3) \$300,000 of the medical aid account—state appropriation is provided for a second center of occupational health and education to be located on the east side of the state. These centers train physicians on best practices for occupational medicine and work with labor and business to improve the quality and outcomes of medical care provided to injured workers.

Sec. 215. 2002 c 371 s 218 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF VETERANS AFFAIRS

(1) HEADQUARTERS

General Fund—State Appropriation (FY 2002).....	\$1,577,000
General Fund—State Appropriation (FY 2003).....	(\$1,533,000)
	<u>\$1,546,000</u>

Charitable, Educational, Penal, and Reformatory

Institutions Account—State	
Appropriation.....	\$7,000
TOTAL APPROPRIATION.....	(\$3,117,000)
	<u>\$3,130,000</u>

(2) FIELD SERVICES

General Fund—State Appropriation (FY 2002).....	\$2,619,000
General Fund—State Appropriation (FY 2003).....	(\$2,580,000)
	<u>\$2,603,000</u>
General Fund—Federal Appropriation.....	\$310,000
General Fund—Private/Local Appropriation.....	\$1,663,000
TOTAL APPROPRIATION.....	(\$7,172,000)
	<u>\$7,195,000</u>

(3) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2002)	\$5,765,000
General Fund—State Appropriation (FY 2003)	(\$5,516,000)
	<u>\$6,034,000</u>
General Fund—Federal Appropriation	(\$27,437,000)
	<u>\$27,411,000</u>
General Fund—Private/Local Appropriation	(\$22,828,000)
	<u>\$22,526,000</u>
TOTAL APPROPRIATION	(\$61,546,000)
	<u>\$61,736,000</u>

The appropriations in this subsection are subject to the following terms and conditions:

(1) \$2,886,000 of the general fund—federal appropriation and \$5,639,000 of the general fund—local appropriation are provided solely for the department to acquire, establish, and operate a nursing facility dedicated to serving men and women from Washington who have served in the nation's armed forces.

(2) After July 1, 2003, unless specifically prohibited by this act, the department may transfer general fund—state appropriations for fiscal year 2003 among programs after approval by the director of financial management. However, the department shall not transfer state moneys that are provided solely for a specified purpose, nor may the department transfer appropriations into the headquarters program.

Sec. 216. 2002 c 371 s 219 (uncodified) is amended to read as follows:

FOR THE HOME CARE QUALITY AUTHORITY

General Fund—State Appropriation (FY 2003)	(\$152,000)
	<u>\$171,000</u>

The appropriation in this section is subject to the following conditions and limitations: The general fund—state appropriation for fiscal year 2003 is provided for start-up costs of the home care quality authority, a new state agency established by the enactment of Initiative Measure No. 775.

Sec. 217. 2002 c 371 s 220 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF HEALTH

General Fund—State Appropriation (FY 2002)	\$57,337,000
General Fund—State Appropriation (FY 2003)	(\$54,940,000)
	<u>\$54,845,000</u>
Health Services Account—State Appropriation	(\$33,520,000)
	<u>\$28,460,000</u>
General Fund—Federal Appropriation	\$297,352,000
General Fund—Private/Local Appropriation	(\$82,912,000)
	<u>\$84,212,000</u>
Hospital Commission Account—State Appropriation	\$2,305,000
Health Professions Account—State Appropriation	\$39,374,000
Emergency Medical Services and Trauma Care Systems Trust Account—State Appropriation	\$14,858,000
Safe Drinking Water Account—State	

Appropriation.....	\$2,689,000
Drinking Water Assistance Account—Federal	
Appropriation.....	\$13,376,000
Waterworks Operator Certification—State	
Appropriation.....	(\$622,000)
	<u>\$743,000</u>
Salmon Recovery Account—State Appropriation	\$182,000
Water Quality Account—State Appropriation	\$3,304,000
Accident Account—State Appropriation	\$257,000
Medical Aid Account—State Appropriation	\$45,000
State Toxics Control Account—State	
Appropriation.....	\$2,809,000
Medical Test Site Licensure Account—State	
Appropriation.....	\$1,801,000
Youth Tobacco Prevention Account—State	
Appropriation.....	\$1,797,000
Tobacco Prevention and Control Account—State	
Appropriation.....	\$43,737,000
TOTAL APPROPRIATION.....	(\$653,217,000)
	<u>\$649,483,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The department or any successor agency is authorized to raise existing fees charged to the drinking water operator certification, newborn screening, radioactive materials, x-ray compliance, drinking water plan review, midwifery, hearing and speech, veterinarians, psychologists, pharmacists, hospitals, podiatrists, home health and home care, transient accommodations licensing, adult residential rehabilitation facilities licensing, state institution licensing, medical test site licensing, alcoholism treatment facilities licensing, certificate of need, and food handlers programs, in excess of the fiscal growth factor established by Initiative Measure No. 601, if necessary, to meet the actual costs of conducting business and the appropriation levels in this section.

(2) \$339,000 of the general fund—state appropriation for fiscal year 2002, \$157,000 of the general fund—state appropriation for fiscal year 2003, and the salmon recovery account appropriation are provided solely for technical assistance to local governments and special districts on water conservation and reuse.

(3) \$1,675,000 of the general fund—state fiscal year 2002 appropriation and \$1,676,000 of the general fund—state fiscal year 2003 appropriation are provided solely for the implementation of the Puget Sound water work plan and agency action items, DOH-01, DOH-02, DOH-03, and DOH-04.

(4) The department of health shall not initiate any services that will require expenditure of state general fund moneys unless expressly authorized in this act or other law. The department may seek, receive, and spend, under RCW 43.79.260 through 43.79.282, federal moneys not anticipated in this act as long as the federal funding does not require expenditure of state moneys for the program in excess of amounts anticipated in this act. If the department receives unanticipated unrestricted federal moneys, those moneys shall be spent for

services authorized in this act or in any other legislation that provides appropriation authority, and an equal amount of appropriated state moneys shall lapse. Upon the lapsing of any moneys under this subsection, the office of financial management shall notify the legislative fiscal committees. As used in this subsection, "unrestricted federal moneys" includes block grants and other funds that federal law does not require to be spent on specifically defined projects or matched on a formula basis by state funds.

(5) (~~(\$19,778,000)~~) \$14,718,000 of the health services account—state appropriation is provided solely for the state's program of universal access to essential childhood vaccines. The department shall utilize all available federal funding before expenditure of these funds.

(6) \$85,000 of the general fund—state appropriation for fiscal year 2002 and \$65,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of Substitute House Bill No. 1365 (infant and child products). If the bill is not enacted by June 30, 2001, the amounts provided in this subsection shall lapse.

(7) From funds appropriated in this section, the state board of health shall convene a broadly-based task force to review the available information on the potential risks and benefits to public and personal health and safety, and to individual privacy, of emerging technologies involving human deoxyribonucleic acid (DNA). The board may reimburse task force members for travel expenses according to RCW 43.03.220. The task force shall consider information provided to it by interested persons on: (a) The incidence of discriminatory actions based upon genetic information; (b) strategies to safeguard civil rights and privacy related to genetic information; (c) remedies to compensate individuals for inappropriate use of their genetic information; and (d) incentives for further research and development on the use of DNA to promote public health, safety, and welfare. The task force shall report on its findings and any recommendations to appropriate committees of the legislature by October 1, 2002.

(8) \$533,000 of the general fund—state appropriation for fiscal year 2002 and \$847,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for performance-based contracts with local jurisdictions to assure the safety of drinking water provided by small "group B" water systems.

(9) By October 1, 2002, the department shall establish mechanisms to assure that the HIV early intervention services program operates within appropriated levels. This shall include a system under which the state's contribution to the cost of care is adjusted on a sliding-scale basis.

(10) By December 1, 2002, the department shall report to appropriate committees of the legislature with a feasibility analysis of implementing an electronic filing system for death certificates. The study shall be conducted in consultation and cooperation with local and state registrars, funeral directors, and physicians, and shall include an analysis of applying an additional fee to death certificates to cover the cost of developing and operating the electronic system.

Sec. 218. 2002 c 371 s 221 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF CORRECTIONS. The appropriations to the department of corrections in this act shall be expended for the programs and

in the amounts specified herein. However, after May 1, ((2002)) 2003, after approval by the director of financial management and unless specifically prohibited by this act, the department may transfer general fund—state appropriations for fiscal year ((2002)) 2003 between programs. The director of financial management shall notify the appropriate fiscal committees of the senate and house of representatives in writing prior to approving any deviations from appropriation levels.

(1) ADMINISTRATION AND SUPPORT SERVICES

General Fund—State Appropriation (FY 2002)	.....	\$36,786,000
General Fund—State Appropriation (FY 2003)	.....	(\$36,434,000)
		<u>\$36,239,000</u>
Public Safety and Education Account—State		
Appropriation	.....	\$1,576,000
Violence Reduction and Drug Enforcement		
Account Appropriation	.....	\$3,254,000
TOTAL APPROPRIATION	.....	(\$78,050,000)
		<u>\$77,855,000</u>

The appropriations in this subsection are subject to the following conditions and limitations: \$4,623,000 of the general fund—state appropriation for fiscal year 2002, \$4,623,000 of the general fund—state appropriation for fiscal year 2003, and \$3,254,000 of the violence reduction and drug enforcement account appropriation are provided solely for the replacement of the department's offender-based tracking system. This amount is conditioned on the department satisfying the requirements of section 902 of this act. The department shall prepare an assessment of the fiscal impact of any changes to the replacement project. The assessment shall:

- (a) Include a description of any changes to the replacement project;
- (b) Provide the estimated costs for each component in the 2001-03 and subsequent biennia;
- (c) Include a schedule that provides the time estimated to complete changes to each component of the replacement project; and
- (d) Be provided to the office of financial management, the department of information services, the information services board, and the staff of the fiscal committees of the senate and the house of representatives no later than November 1, 2002.

(2) CORRECTIONAL OPERATIONS

General Fund—State Appropriation (FY 2002)	.....	\$404,390,000
General Fund—State Appropriation (FY 2003)	.....	(\$412,788,000)
		<u>\$433,915,000</u>
General Fund—Federal Appropriation	.....	(\$9,142,000)
		<u>\$9,936,000</u>
Violence Reduction and Drug Enforcement Account—		
State Appropriation	.....	\$1,596,000
Public Health Services Account Appropriation	.....	\$1,453,000
TOTAL APPROPRIATION	.....	(\$829,369,000)
		<u>\$851,290,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The department may expend funds generated by contractual agreements entered into for mitigation of severe overcrowding in local jails. Any funds generated in excess of actual costs shall be deposited in the state general fund. Expenditures shall not exceed revenue generated by such agreements and shall be treated as recovery of costs.

(b) The department shall provide funding for the pet partnership program at the Washington corrections center for women at a level at least equal to that provided in the 1995-97 biennium.

(c) The department of corrections shall accomplish personnel reductions with the least possible impact on correctional custody staff, community custody staff, and correctional industries. For the purposes of this subsection, correctional custody staff means employees responsible for the direct supervision of offenders.

(d) \$553,000 of the general fund—state appropriation for fiscal year 2002 and \$956,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to increase payment rates for contracted education providers, contracted chemical dependency providers, and contracted work release facilities.

(e) During the 2001-03 biennium, when contracts are established or renewed for offender pay phone and other telephone services provided to inmates, the department shall select the contractor or contractors primarily based on the following factors: (i) The lowest rate charged to both the inmate and the person paying for the telephone call; and (ii) the lowest commission rates paid to the department, while providing reasonable compensation to cover the costs of the department to provide the telephone services to inmates and provide sufficient revenues for the activities funded from the institutional welfare betterment account (~~as of January 1, 2000~~).

(f) For the acquisition of properties and facilities, the department of corrections is authorized to enter into financial contracts, paid for from operating resources, for the purposes indicated and in not more than the principal amounts indicated, plus financing expenses and required reserves pursuant to chapter 39.94 RCW. This authority applies to the following: Lease-develop with the option to purchase or lease-purchase approximately 50 work release beds in facilities throughout the state for \$3,500,000.

(g) \$22,000 of the general fund—state appropriation for fiscal year 2002 and \$76,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of Second Substitute Senate Bill No. 6151 (high risk sex offenders in the civil commitment and criminal justice systems). If the bill is not enacted by June 30, 2001, the amounts provided in this subsection shall lapse.

(h) The department may acquire a ferry for no more than \$1,000,000 from Washington state ferries. Funds expended for this purpose will be recovered from the sale of marine assets.

~~((+))~~ (i) Within the amounts appropriated in this section, funding is provided for the initial implementation of a medical algorithm practice program within the department's facilities. The program shall be designed to achieve clinical efficacy and costs efficiency in the utilization of psychiatric drugs.

(3) COMMUNITY SUPERVISION

General Fund—State Appropriation (FY 2002)	.....	\$68,097,000
General Fund—State Appropriation (FY 2003)	.....	(\$75,720,000)
		<u>\$77,436,000</u>
General Fund—Federal Appropriation	.....	\$870,000
Public Safety and Education		
Account—State Appropriation	.....	\$15,493,000
TOTAL APPROPRIATION	.....	(\$160,180,000)
		<u>\$161,896,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The department of corrections shall accomplish personnel reductions with the least possible impact on correctional custody staff, community custody staff, and correctional industries. For the purposes of this subsection, correctional custody staff means employees responsible for the direct supervision of offenders.

(b) \$75,000 of the general fund—state appropriation for fiscal year 2002 and \$75,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the department of corrections to contract with the institute for public policy for responsibilities assigned in chapter 196, Laws of 1999 (offender accountability act) and sections 7 through 12 of chapter 197, Laws of 1999 (drug offender sentencing).

(c) \$16,000 of the general fund—state appropriation for fiscal year 2002 and \$28,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to increase payment rates for contracted chemical dependency providers.

(d) \$30,000 of the general fund—state appropriation for fiscal year 2002 and \$30,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of Substitute Senate Bill No. 5118 (interstate compact for adult offender supervision). If the bill is not enacted by June 30, 2001, the amounts provided in this subsection shall lapse.

(4) CORRECTIONAL INDUSTRIES

General Fund—State Appropriation (FY 2002)	.....	\$631,000
General Fund—State Appropriation (FY 2003)	.....	\$629,000
TOTAL APPROPRIATION	.....	\$1,260,000

The appropriations in this subsection are subject to the following conditions and limitations: \$110,000 of the general fund—state appropriation for fiscal year 2002 and \$110,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for transfer to the jail industries board. The board shall use the amounts provided only for administrative expenses, equipment purchases, and technical assistance associated with advising cities and counties in developing, promoting, and implementing consistent, safe, and efficient offender work programs.

(5) INTERAGENCY PAYMENTS

General Fund—State Appropriation (FY 2002)	.....	\$18,568,000
General Fund—State Appropriation (FY 2003)	.....	\$18,569,000
TOTAL APPROPRIATION	.....	\$37,137,000

Sec. 219. 2002 c 371 s 222 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SERVICES FOR THE BLIND

General Fund—State Appropriation (FY 2002)	\$1,652,000
General Fund—State Appropriation (FY 2003)	(\$1,588,000)
	<u>\$1,582,000</u>
General Fund—Federal Appropriation	(\$12,643,000)
	<u>\$13,186,000</u>
General Fund—Private/Local Appropriation	\$80,000
TOTAL APPROPRIATION	(\$15,963,000)
	<u>\$16,500,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$50,000 of the general fund—state appropriation for fiscal year 2002 and \$50,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to increase state assistance for a comprehensive program of training and support services for persons who are both deaf and blind.

Sec. 220. 2002 c 371 s 224 (uncodified) is amended to read as follows:

FOR THE EMPLOYMENT SECURITY DEPARTMENT

General Fund—Federal Appropriation	\$180,628,000
General Fund—Private/Local Appropriation	\$30,119,000
Unemployment Compensation Administration Account— Federal Appropriation	(\$194,167,000)
	<u>\$194,011,000</u>
Administrative Contingency Account—State Appropriation	(\$15,514,000)
	<u>\$13,914,000</u>
Employment Service Administrative Account—State Appropriation	(\$20,001,000)
	<u>\$20,851,000</u>
TOTAL APPROPRIATION	(\$440,429,000)
	<u>\$439,523,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$156,000 of the unemployment compensation administration account is provided solely for the implementation of Substitute House Bill No. 2355 (unemployment insurance). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

(2) ~~(\$1,600,000)~~ \$850,000 of the ~~administrative contingency account~~ employment service administrative account—state appropriation is provided solely for administrative costs related to the implementation of Engrossed House Bill No. 2901 (unemployment insurance). If the bill is not enacted by June 30, 2002, the amount provided in this subsection shall lapse.

**PART III
NATURAL RESOURCES**

Sec. 301. 2002 c 371 s 302 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

General Fund—State Appropriation (FY 2002)	\$39,404,000
General Fund—State Appropriation (FY 2003)	(\$34,283,000)
	<u>\$34,225,000</u>
General Fund—Federal Appropriation	\$56,805,000
General Fund—Private/Local Appropriation	\$4,351,000
Special Grass Seed Burning Research Account—	
State Appropriation	\$14,000
Reclamation Revolving Account—State	
Appropriation	\$1,935,000
Flood Control Assistance Account—	
State Appropriation	\$4,098,000
State Emergency Water Projects Revolving Account—	
State Appropriation	\$878,000
Waste Reduction/Recycling/Litter Control Account—	
State Appropriation	\$14,287,000
State Drought Preparedness Account—State	
Appropriation	\$2,575,000
Salmon Recovery Account—State Appropriation	\$250,000
State and Local Improvements Revolving Account	
(Water Supply Facilities)—State	
Appropriation	\$587,000
Water Quality Account—State Appropriation	(\$22,985,000)
	<u>\$22,976,000</u>
Wood Stove Education and Enforcement Account—	
State Appropriation	\$353,000
Worker and Community Right-to-Know Account—	
State Appropriation	\$3,288,000
State Toxics Control Account—State	
Appropriation	\$70,001,000
State Toxics Control Account—Private/Local	
Appropriation	\$350,000
Local Toxics Control Account—State	
Appropriation	\$4,751,000
Water Quality Permit Account—State	
Appropriation	\$24,210,000
Underground Storage Tank Account—State	
Appropriation	\$2,682,000
Environmental Excellence Account—State	
Appropriation	\$504,000
Biosolids Permit Account—State Appropriation	\$764,000
Hazardous Waste Assistance Account—State	
Appropriation	\$4,308,000
Air Pollution Control Account—State	
Appropriation	\$1,366,000
Oil Spill Prevention Account—State	
Appropriation	\$7,921,000
Air Operating Permit Account—State	
Appropriation	\$3,608,000
Freshwater Aquatic Weeds Account—State	

Appropriation	\$1,898,000
Oil Spill Response Account—State	
Appropriation	\$7,078,000
Metals Mining Account—State Appropriation	\$5,000
Water Pollution Control Revolving Account—	
State Appropriation	((<u>\$536,000</u>))
	<u>\$564,000</u>
Water Pollution Control Revolving Account—	
Federal Appropriation	\$2,802,000
TOTAL APPROPRIATION	((<u>\$318,877,000</u>))
	<u>\$318,838,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$3,874,000 of the general fund—state appropriation for fiscal year 2002, ((\$3,874,000)) \$2,684,000 of the general fund—state appropriation for fiscal year 2003, \$394,000 of the general fund—federal appropriation, \$2,070,000 of the oil spill prevention account—state appropriation, \$1,190,000 of the state toxics control account, and \$3,686,000 of the water quality permit account—state appropriation are provided solely for the implementation of the Puget Sound work plan and agency action items DOE-01, DOE-02, DOE-03, DOE-05, DOE-06, DOE-07, DOE-08, and DOE-09.

(2) \$500,000 of the state toxics control account appropriation is provided for an assessment of the financial assurance requirements of hazardous waste management facilities. By September 30, 2002, the department shall provide to the governor and appropriate committees of the legislature a report that: (a) Evaluates current statutes and regulations governing hazardous waste management facilities; (b) analyzes and makes recommendations for improving financial assurance regulatory control; and (c) makes recommendations for funding financial assurance regulatory control of hazardous waste management facilities.

(3) \$814,000 of the state drought preparedness account—state appropriation, \$549,000 of the water quality account—state appropriation, and \$250,000 of the salmon recovery account—state appropriation are provided solely for enhanced streamflow monitoring in critical salmon recovery basins. \$640,000 of this amount is provided solely to implement the Puget Sound work plan and agency action item DOE-01.

(4) \$1,000,000 of the state toxics control account appropriation in this section is provided solely for the department to work in cooperation with local jurisdictions to address emerging storm water management requirements. This work shall include developing a storm water manual for eastern Washington, technical assistance to local jurisdictions, and increased implementation of the department's existing storm water program. \$200,000 of this amount is provided solely for implementation of the Puget Sound work plan and agency action item DOE-06.

(5) \$383,000 of the general fund—state appropriation for fiscal year 2002 and \$383,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for water conservation plan review, technical assistance, and project review for water conservation and reuse projects. By December 1, 2003,

the department in cooperation with the department of health shall report to the governor and appropriate committees of the legislature on the activities and achievements related to water conservation and reuse during the past two biennia. The report shall include an overview of technical assistance provided, reuse project development activities, and water conservation achievements.

(6) \$3,424,000 of the state toxics control account appropriation is provided solely for methamphetamine lab clean up activities.

(7)(a) \$800,000 of the state toxics control account appropriation is provided solely to implement the department's persistent, bioaccumulative toxic chemical strategy.

(b) In developing its persistent bioaccumulative toxic chemical strategy, the department must:

(i) First develop a planned strategy for the reduction of mercury from the environment. This strategy will be known as the mercury chemical action plan. The development of the mercury chemical action plan will be a model for developing all future chemical action plans;

(ii) Develop a mercury chemical action plan that includes, but is not limited to: (A) Identifying current mercury uses in Washington; (B) analyzing current state and federal laws, regulations, rules, and voluntary measures that can be used to reduce or eliminate mercury; (C) identifying mercury reduction and elimination options; and (D) implementing actions to reduce or eliminate mercury uses and releases;

(iii) Involve an advisory committee of up to twelve members composed of adequate and balanced representation of local government, business, agriculture, and environmental, public health, and community groups in the development of the mercury chemical action plan. In addition, the department must invite and strongly encourage any interested tribes or federal agencies to participate in the advisory committee process. The advisory committee must be involved in the development of the mercury chemical action plan. All information that will serve as the basis for any decisions in the mercury chemical action plan's development must be available to the advisory committee members. The advisory committee has sixty days to provide input to the department on the elements of the mercury chemical action plan. The comments and suggestions made by the advisory committee must be considered by the department; however, consensus of the advisory committee is not necessary for the department to move forward in the development of the mercury chemical action plan. All meetings of the advisory committee are subject to the provisions of chapter 42.30 RCW. The advisory committee for the mercury chemical action plan must be established by April 15, 2002;

(iv) By August 31, 2002, develop and issue a draft mercury chemical action plan in consultation with the advisory committee. Following the release of the draft plan, the department must allow for a sixty-day public comment period. The advisory committee, following the comment period, shall consider the public comments received; and

(v) The department shall finalize the mercury chemical action plan by December 31, 2002. The final mercury chemical action plan, developed after considering the public comments and the input of the advisory committee, must outline actions for the department to take, including, but not limited to, the

development of any rules and recommending any legislation. Implementation must begin no later than February 1, 2003.

(8) Up to \$11,365,000 of the state toxics control account appropriation is provided for the remediation of contaminated sites. Of this amount, up to \$2,000,000 may be used to pay existing site remediation liabilities owed to the federal environmental protection agency for clean-up work that has been completed. The department shall carefully monitor actual revenue collections into the state toxics control account, and is authorized to limit actual expenditures of the appropriation provided in this section consistent with available revenue.

(9) \$200,000 of the state toxics control account appropriation is provided to assess the effectiveness of the state's current toxic pollution prevention and dangerous waste programs and policies. The department shall work with affected stakeholder groups and the public to evaluate the performance of existing programs, and identify feasible methods of reducing the generation of these wastes. The department shall report its findings to the governor and the appropriate committees of the legislature by September 30, 2002.

(10) \$1,200,000 of the state toxics control account appropriation is provided solely for the department, in conjunction with affected local governments, to address emergent areawide soil contamination problems. The department's efforts will include public involvement processes and completing assessments of the geographical extent of toxic contamination including highly contaminated areas.

(11) \$170,000 of the oil spill prevention account appropriation is provided solely for implementation of the Puget Sound work plan action item UW-02 through a contract with the University of Washington's sea grant program to develop an educational program targeted to small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas.

(12) \$1,500,000 of the general fund—state appropriation for fiscal year 2002, \$1,500,000 of the general fund—state appropriation for fiscal year 2003, and \$3,000,000 of the water quality account appropriation are provided solely to implement chapter 237, Laws of 2001 (Engrossed Substitute House Bill No. 1832, water resources management) and to support the processing of applications for changes and transfers of existing water rights.

(13) \$9,000,000 of the water quality account—state appropriation is provided solely for grants to local governments to conduct watershed planning and technical assistance. At least \$7,000,000 shall be distributed as grants and shall include \$200,000 for facilitation of the central Puget Sound regional initiative.

(14) \$3,114,000 of the water quality account appropriation is provided solely to implement Engrossed Substitute House Bill No. 1832 (water resources management). Of this amount: (a) \$1,200,000 is provided for grants to local governments for targeted watershed assessments consistent with Engrossed Substitute House Bill No. 1832; and (b) the remainder of the funding is provided solely for development of a state environmental policy act template to streamline environmental review, creation of a blue ribbon panel to develop long-term watershed planning implementation funding options, and technical assistance.

(15) \$200,000 of the water quality account appropriation is provided solely to provide coordination and assistance to groups established for the purpose of

protecting, enhancing, and restoring the biological, chemical, and physical processes of watersheds. These groups may include those involved in coordinated resource management, regional fisheries enhancement groups, conservation districts, watershed councils, and private nonprofit organizations incorporated under Title 24 RCW.

(16) \$325,000 of the state drought preparedness account—state appropriation is provided solely for an environmental impact statement of the Pine Hollow reservoir project to be conducted in conjunction with the local irrigation district.

(17) \$1,352,000 of the general fund—state appropriation for fiscal year 2002, \$700,000 of the general fund—state appropriation for fiscal year 2003, \$700,000 of the water quality account appropriation, and \$280,000 of the oil spill prevention account appropriation are provided solely for oil spill prevention measures in Puget Sound. Of these amounts:

(a) The general fund appropriation and the water quality account appropriation are provided solely for the department of ecology to provide for charter safety tug services, including the placement of a dedicated tug at Neah Bay for not less than 200 days in fiscal year 2002 and fiscal year 2003. By January 10, 2002, the department shall report to the appropriate committees of the legislature regarding the number of dispatches, response time and distance, and other factors pertaining to the safety tug services. The general fund—state appropriation in this subsection is provided solely for implementation of the Puget Sound work plan and agency action item DOE-09;

(b) \$100,000 of the oil spill prevention account appropriation is provided solely for the department to conduct a vessel transponder feasibility study for Washington waters and undertake a trial vessel tracking program using transponders. In conducting the feasibility study and trial program, the department of ecology shall consult with state pilotage authorities, the maritime industry and the United States coast guard; and

(c) \$180,000 of the oil spill prevention account appropriation is provided solely to acquire vessel incident reporting information.

The governor shall request the federal government to provide ongoing resources to station a dedicated rescue tug at Neah Bay.

(18) \$600,000 of the water quality account—state appropriation is provided solely for setting instream flows in six basins not currently planning under the watershed planning act.

(19) \$200,000 of the water quality account appropriation is provided solely for activities associated with development of the Willapa River total maximum daily load (TMDL). The activities shall include but are not limited to: (a) A contract with Pacific county to complete the oxygen/bacteria and temperature model for the TMDL, conduct a technical analysis of local options for waste load allocations, and develop the first draft of the waste load allocation plan; and (b) a contract for facilitation services for a public process for the TMDL, assist in reaching consensus between parties involved in the technical work, help ensure that there is an accurate public record, and provide a forum for the waste load allocation.

(20) \$175,000 of the biosolids permit account is provided solely to develop a statewide septage strategy. The department shall work with affected stakeholders to address septage permit requirements, changes to existing rules,

clarification of state and local responsibilities, and fee structure changes that are necessary to support the program in future biennia. The department shall report its findings to the governor and appropriate committees of the legislature by June 30, 2003.

(21) \$189,000 of the general fund—state appropriation for fiscal year 2003 is provided solely for facilitation services and the following activities:

(a)(i) A joint task force is created to study judicial and administrative alternatives for resolving water disputes. The task force shall be organized and led by the office of the attorney general. In addition to the office of the attorney general, members of the task force shall include:

(A) Representatives of the legislature, including one member from each caucus appointed by the president of the senate and the speaker of the house of representatives;

(B) Representatives of the superior courts appointed by the president of the superior court judges association, and shall include two judicial officers of the superior court from eastern Washington and two judicial officers of the superior court from western Washington;

(C) A representative of the state court of appeals appointed by the chief justice of the state supreme court;

(D) A representative of the environmental hearings office; and

(E) A representative of the department of ecology.

(ii) The objectives of the task force are to:

(A) Examine and characterize the types of water disputes to be resolved;

(B) Examine the approach of other states to water dispute resolution;

(C) Recommend one or more methods to resolve water disputes, including, but not limited to, an administrative resolution process; a judicial resolution process such as water court; or any combination thereof; and

(D) Recommend an implementation plan that will address:

(I) A specific administrative structure for each method used to resolve water disputes;

(II) The cost to implement the plan; and

(III) The changes to statutes and administrative rules necessary to implement the plan.

(iii) The office of the attorney general shall work with the staff of the standing committees of the legislature with jurisdiction over water resources to research and compile information relevant to the mission of the task force by December 31, 2002.

(iv) The task force shall submit its report to the appropriate committees of the legislature no later than December 30, 2003.

(b) The department of ecology and the attorney general's office shall conduct a study to identify possible ways to streamline the water right general adjudication procedures. By December 1, 2002, the agencies will report on their findings and recommendations to the legislature.

(c)(i) The legislature finds that it is in the public interest to investigate the feasibility of conducting negotiations with other states and Canada regarding use of water bodies they share with the state of Washington.

(ii) The governor, or the governor's designee, shall consult with the states that share water bodies with the state of Washington, with Canada, and with other states that have conducted similar negotiations, regarding issues and

strategies in those negotiations and shall report to the standing committees of the legislature having jurisdiction over water resources by January 1, 2003.

(iii) In conducting the consultations under this subsection (c), the governor shall give priority consideration to the interstate issues affecting the Spokane-Rathdrum Prairie aquifer including those issues affecting a safe and adequate supply of public drinking water, as provided by municipal governments.

(d) By October 1, 2002, the department of ecology shall provide to the appropriate standing committees of the legislature, a plan, schedule, and budget for improving the administration of water right records held by the department of ecology. The department of ecology shall work with the department of revenue and with county auditors in developing recommendations for improving the administration of water rights ownership information and integrating this information with real property ownership records. The department of ecology shall evaluate the need for grants to counties to assist with recording and information management needs related to water rights ownership and title.

(22) For applicants that meet eligibility requirements, the department of ecology shall consider individual stormdrain treatment systems to be classified as "activity" projects and eligible for grant funding provided under section 319 the federal Clean Water Act. These projects shall be prioritized for funding along with other grant proposals. Receipt of funding shall be based on this prioritization.

Sec. 302. 2002 c 371 s 303 (uncodified) is amended to read as follows:

FOR THE STATE PARKS AND RECREATION COMMISSION

General Fund—State Appropriation (FY 2002)	\$32,198,000
General Fund—State Appropriation (FY 2003)	(\$30,340,000)
	<u>\$30,332,000</u>
General Fund—Federal Appropriation	\$2,690,000
General Fund—Private/Local Appropriation	\$60,000
Winter Recreation Program Account—State	
Appropriation	\$1,087,000
Off Road Vehicle Account—State Appropriation	\$274,000
Snowmobile Account—State Appropriation	\$4,682,000
Aquatic Lands Enhancement Account—State	
Appropriation	\$337,000
Public Safety and Education Account—State	
Appropriation	\$47,000
Salmon Recovery Account—State Appropriation	\$200,000
Water Trail Program Account—State	
Appropriation	\$24,000
Parks Renewal and Stewardship Account—	
State Appropriation	(\$27,193,000)
	<u>\$27,733,000</u>
TOTAL APPROPRIATION	(\$99,132,000)
	<u>\$99,664,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Fees approved by the state parks and recreation commission in the 2001-03 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055.

(2) The state parks and recreation commission, in collaboration with the office of financial management and legislative staff, shall develop a cost-effective and readily accessible approach for reporting revenues and expenditures at each state park. The reporting system shall be complete and operational by December 1, 2001.

(3) \$79,000 of the general fund—state appropriation for fiscal year 2002, \$79,000 of the general fund—state appropriation for fiscal year 2003, and \$8,000 of the winter recreation program account—state appropriation are provided solely for a grant for the operation of the Northwest avalanche center.

(4) \$432,000 of the parks renewal and stewardship account appropriation is provided for the operation of the Silver Lake visitor center. If a long-term management agreement is not reached with the U.S. forest service by September 30, 2001, the amount provided in this subsection shall lapse.

(5) \$189,000 of the aquatic lands enhancement account appropriation is provided solely for the implementation of the Puget Sound work plan and agency action item P+RC-02.

(6) The task force on the funding of state parks and outdoor recreation is hereby created, to consider and develop legislation on the operation and funding of the state parks and outdoor recreation programs of the state. The committee shall be composed of fifteen members, four members of the senate appointed by the president of the senate and to include two members from each caucus, four members of the house of representatives appointed by the speaker of the house of representatives and to include two members from each caucus, three members appointed by the governor and to include at least one representative of a broad coalition of users of the state's parks and outdoor recreation programs, one member appointed by the commissioner of public lands, one member appointed by the chair of the fish and wildlife commission, and one member appointed by the chair of the state parks and recreation commission, and one member appointed by the interagency committee for outdoor recreation. The task force shall elect its own officers, shall be staffed by staff of the legislature, the executive agencies, and the office of the governor, and may appoint an advisory committee of additional persons and organizations interested in the operation and funding of state parks and outdoor recreation. The task force shall specifically review and incorporate into its work the reports prepared pursuant to budget provisos by the Washington state parks and recreation commission regarding its operating budget needs, deferred maintenance backlog, and capital facilities renovation and replacement requirements. The task force shall prepare recommendations for improving the operation of state parks and outdoor recreation programs and for securing adequate funding on a permanent basis for supporting the needs of the state parks and outdoor recreation programs of the state, including a legislative proposal for the implementation of an evergreen recreation pass that would combine the various permits and licenses of the participating agencies into a single pass for recreational day use. The recommendations shall be developed no later than January 1, 2003, and shall be designed for enactment by the legislature during 2003 for implementation in the 2005-07 biennium. The task force shall cease to exist on June 30, 2003.

Sec. 303. 2002 c 371 s 307 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF FISH AND WILDLIFE

General Fund—State Appropriation (FY 2002)	\$46,375,000
General Fund—State Appropriation (FY 2003)	(\$44,334,000)
	<u>\$44,328,000</u>
General Fund—Federal Appropriation	(\$37,716,000)
	<u>\$46,242,000</u>
General Fund—Private/Local Appropriation	(\$24,365,000)
	<u>\$29,039,000</u>
Off Road Vehicle Account—State Appropriation	\$475,000
Aquatic Lands Enhancement Account—State Appropriation	(\$5,133,000)
	<u>\$5,366,000</u>
Public Safety and Education Account—State Appropriation	\$574,000
Recreational Fisheries Enhancement Account— State Appropriation	\$3,354,000
Salmon Recovery Account—State Appropriation	\$1,612,000
Warm Water Game Fish Account—State Appropriation	\$2,567,000
Eastern Washington Pheasant Enhancement Account— State Appropriation	\$750,000
Wildlife Account—State Appropriation	(\$50,680,000)
	<u>\$50,897,000</u>
Wildlife Account—Federal Appropriation	(\$38,182,000)
	<u>\$29,656,000</u>
Wildlife Account—Private/Local Appropriation	(\$15,133,000)
	<u>\$10,459,000</u>
Game Special Wildlife Account—State Appropriation	\$1,941,000
Game Special Wildlife Account—Federal Appropriation	\$9,591,000
Game Special Wildlife Account—Private/Local Appropriation	\$350,000
Environmental Excellence Account—State Appropriation	\$15,000
Regional Fisheries Salmonid Recovery Account— Federal Appropriation	\$1,750,000
Oil Spill Administration Account—State Appropriation	\$963,000
Oyster Reserve Land Account—State Appropriation	\$135,000
TOTAL APPROPRIATION	(\$285,995,000)
	<u>\$286,439,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,682,000 of the general fund—state appropriation for fiscal year 2002 and \$1,189,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of the Puget Sound work plan and agency action items DFW-01 through DFW-07.

(2) \$200,000 of the general fund—state appropriation for fiscal year 2002 and \$200,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the department to update the salmon and steelhead stock inventory.

(3) \$250,000 of the general fund—state appropriation for fiscal year 2002 and \$250,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the department to implement a hatchery endangered species act response. The response shall include emergency hatchery responses, production, and retrofitting of hatcheries for salmon recovery.

(4) \$600,000 of the general fund—state appropriation for fiscal year 2002 and \$600,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for local salmon recovery technical assistance.

(5) \$250,000 of the salmon recovery account appropriation is provided solely for a grant to the lower Skykomish River habitat conservation group for the purpose of developing a salmon recovery plan, in coordination with the lead entity established under chapter 77.85 RCW for that area. The salmon recovery plan must be consistent with the regional recovery plans of the Puget Sound shared strategy and criteria developed by the department for the regional salmon recovery planning program.

(6) \$91,000 of the warm water game fish account appropriation is provided solely for warm water fish culture at the Rod Meseberg warm water fish production facility.

(7) \$200,000 of the general fund—state appropriation for fiscal year 2002 and \$200,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to fund three cooperative compliance programs, both in Western and Eastern Washington. The cooperative compliance program shall conduct fish screen, fish way, and fish passage barrier assessments and correction plans for landowners seeking cooperative compliance agreements with the department.

(8) \$1,300,000 of the salmon recovery account appropriation, \$400,000 of the general fund—state appropriation for fiscal year 2003, and \$5,000,000 of the general fund—federal appropriation are provided solely for economic adjustment assistance to fishermen pursuant to the 1999 Pacific salmon treaty agreement.

(9) \$810,000 of the general fund—state appropriation for fiscal year 2002, \$790,000 of the general fund—state appropriation for fiscal year 2003, and \$250,000 of the wildlife account—state appropriation are provided solely for enforcement and biological staff to respond and take appropriate action to public complaints regarding bear and cougar.

(10) \$75,000 of the general fund—state appropriation for fiscal year 2003 is provided solely to the department to execute an interagency agreement with the joint legislative audit and review committee to complete an independent organizational and operational review of the fish management division of the fish program. This review shall include:

(a) Identifying those actual functions carried out by the fish management division, including all expenditures by fund source linked to those functions, and the agency's rationale for its current staffing and expenditure levels;

(b) Distinguishing those specific division activities and expenditures that are mandated by court decisions, federal laws or treaties, federal contracts, state laws, and fish and wildlife commission directives, as apart from department discretionary policies;

(c) Reviewing the extent to which division activities and related program expenditures contribute to meeting legislative intent, agency goals, and programmatic objectives; and

(d) Evaluating how performance in meeting intent, goals, and objectives through program activities is measured, reported, and improved.

The committee shall provide a status report on this review to the appropriate legislative policy and fiscal committees by November 1, 2002, and a final report by December 1, 2003.

(11) The department shall implement a lands program manager consolidation program. The consolidation program shall target the department's south central region. The savings from this consolidation shall be used by the department for additional maintenance on agency lands within the south central region.

(12) The department shall implement a survey of all agency lands to evaluate whether agency lands support the agency's strategic plan and goals. The department shall submit a report to the governor and legislature by September 1, 2002, identifying those lands not conforming with the agency's strategic plan and which should be divested.

(13) \$388,000 of the general fund—state appropriation for fiscal year 2002 and \$388,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to implement the forests and fish agreement and includes funding to continue statewide coordination and implementation of the forests and fish rules, integration of portions of the hydraulic code into the forest practices rules to provide permit streamlining, and sharing the responsibility of developing and implementing the required forests and fish agreement monitoring and adaptive management program.

(14) \$194,000 of the general fund—state appropriation for fiscal year 2002 and \$195,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for staff to represent the state's fish and wildlife interests in hydroelectric project relicensing processes by the federal energy regulatory commission.

(15) \$156,000 of the wildlife account—state appropriation is provided solely for a youth fishing coordinator to develop partnerships with local communities, and to identify, develop, fund, and promote youth fishing events and opportunities. Event coordination and promotion services shall be contracted to a private consultant.

(16) \$135,000 of the oyster reserve land account appropriation is provided solely to implement chapter 273, Laws of 2001, Engrossed Second Substitute House Bill No. 1658 (state oyster reserve lands).

(17) \$43,000 of the general fund—state appropriation for fiscal year 2002 and \$42,000 of the general fund—state appropriation for fiscal year 2003 are

provided solely for staffing and operation of the Tennant Lake interpretive center.

(18) \$32,000 of the general fund—state appropriation for fiscal year 2002 and \$33,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to support the activities of the aquatic nuisance species coordination committee to foster state, federal, tribal, and private cooperation on aquatic nuisance species issues. The committee shall strive to prevent the introduction of nonnative aquatic species and to minimize the spread of species that are introduced.

(19) \$25,000 of the wildlife account—state appropriation is provided solely for the WildWatchCam program to provide internet transmission of live views of wildlife.

(20) \$8,000 of the general fund—state appropriation for fiscal year 2002 and \$7,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the payment of the department's share of approved lake management district assessments. By December 15, 2001, the department shall provide the legislature a summary of its activities related to lake management districts as well as recommendations for establishing equitable lake management district assessments.

(21) The department shall emphasize enforcement of laws related to protection of fish habitat and the illegal harvest of salmon and steelhead. Within the amount provided for the agency, the department shall provide support to the department of health to enforce state shellfish harvest laws.

(22) The fish and wildlife commission shall evaluate the adequacy, structure, and amount of fees for hunting and fishing licenses and make recommendations for revision of the fee structure and schedule as appropriate. The evaluation shall consider, but is not limited to: Assessment of the fish and wildlife resource management needs, fees in adjacent states and countries, and efficiencies made possible through automation. The commission shall report to the legislature and the office of financial management by November 1, 2002.

(23) The department shall establish a hydraulic project approval program technical review task force. The task force shall be composed of a balanced representation of both hydraulic project proponents and conservation interests. The task force shall conduct a thorough evaluation of the hydraulic project approval program and make recommendations to the legislature by November 30, 2002, based upon its evaluation. The task force recommendations shall include a potential fee structure and schedule for hydraulic project approval permits.

Sec. 304. 2002 c 371 s 308 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

General Fund—State Appropriation (FY 2002)	\$35,949,000
General Fund—State Appropriation (FY 2003)	(\$30,465,000)
	<u>\$48,332,000</u>
General Fund—Federal Appropriation	(\$10,936,000)
	<u>\$20,267,000</u>
General Fund—Private/Local Appropriation	\$2,265,000
Forest Development Account—State Appropriation	\$50,088,000

Off Road Vehicle Account—State	
Appropriation	\$3,684,000
Surveys and Maps Account—State	
Appropriation	\$2,689,000
Aquatic Lands Enhancement Account—State	
Appropriation	\$3,923,000
Resources Management Cost Account—State	
Appropriation	\$79,156,000
Surface Mining Reclamation Account—State	
Appropriation	\$2,416,000
Salmon Recovery Account—State	
Appropriation	\$625,000
Water Quality Account—State Appropriation	(\$2,900,000)
	<u>\$2,898,000</u>
Aquatic Land Dredged Material Disposal Site	
Account—State Appropriation	\$1,056,000
Natural Resource Conservation Areas Stewardship	
Account Appropriation	\$209,000
State Toxics Account—State Appropriation	\$1,865,000
Air Pollution Control Account—State	
Appropriation	\$629,000
Metals Mining Account—State Appropriation	\$64,000
Agricultural College Trust Management Account	
Appropriation	\$1,790,000
Derelict Vessel Removal Account—State	
Appropriation	(\$89,000)
	<u>\$289,000</u>
TOTAL APPROPRIATION	(\$230,798,000)
	<u>\$258,194,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$18,000 of the general fund—state appropriation for fiscal year 2002, \$18,000 of the general fund—state appropriation for fiscal year 2003, and \$998,000 of the aquatic lands enhancement account appropriation are provided solely for the implementation of the Puget Sound work plan and agency action items DNR-01, DNR-02, and DNR-04.

(2)(a) \$625,000 of the salmon recovery account appropriation, \$1,250,000 of the general fund—state appropriation for fiscal year 2002, \$1,250,000 of the general fund—state appropriation for fiscal year 2003, and \$2,900,000 of the water quality account—state appropriation are provided solely for implementation of chapter 4, Laws of 1999 sp. sess. (forest practices and salmon recovery).

(b) \$250,000 of the salmon recovery account appropriation is provided solely for and shall be expended to develop a small forest landowner data base in ten counties. \$150,000 of the amount in this subsection shall be used to purchase the data. \$100,000 of the amount in this subsection shall purchase contracted analysis of the data.

(3) \$2,000,000 of the forest development account appropriation is provided solely for road decommissioning, maintenance, and repair in the Lake Whatcom watershed.

(4) \$543,000 of the forest fire protection assessment account appropriation, \$22,000 of the forest development account appropriation, and \$76,000 of the resource management cost account appropriation are provided solely to implement chapter 279, Laws of 2001, Substitute House Bill No. 2104, (modifying forest fire protection assessments).

(5) \$354,000 of the general fund—state appropriation for fiscal year 2002 and \$895,000 of the general fund—state appropriation for fiscal year 2003 shall be transferred to the agricultural college trust management account and are provided solely to manage approximately 70,700 acres of Washington State University's agricultural college trust lands.

(6) \$4,000 of the general fund—state appropriation for fiscal year 2002 and \$4,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to compensate the forest board trust for a portion of the lease to the Crescent television improvement district consistent with RCW 79.12.055.

(7) \$828,000 of the surface mine reclamation account appropriation is provided to implement Engrossed House Bill No. 1845 (surface mining fees). If the bill is not enacted by June 30, 2001, the amount provided in this subsection shall lapse.

(8) \$800,000 of the aquatic lands enhancement account appropriation and \$200,000 of the resources management cost account appropriation are provided solely to improve asset management on state-owned aquatic lands. The department shall streamline the use authorization process for businesses operating on state-owned aquatic lands and issue decisions on 325 pending lease applications by June 30, 2003. The department, in consultation with the attorney general, shall develop a strategic program to resolve claims related to contaminated sediments on state-owned aquatic lands.

(9) \$246,000 of the resource management cost account appropriation is provided to the department for continuing control of spruce budworm.

(10) \$100,000 of the aquatic lands enhancement account is provided solely for the development and initial implementation of a statewide management plan for marine reserves.

(11) \$7,657,859 of the general fund—state appropriation for fiscal year 2002 and ((~~\$4,153,859~~) \$22,049,859) of the general fund—state appropriation for fiscal year 2003 are provided solely for emergency fire suppression.

(12) \$7,216,000 of the general fund—state appropriation for fiscal year 2002 and \$6,584,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for fire protection activities and to implement provisions of the 1997 tridata fire program review.

(13) \$100,000 of the general fund—state appropriation for fiscal year 2002, \$550,000 of the aquatic lands enhancement account—state appropriation, and \$209,000 of the natural resources conservation areas stewardship account—state appropriation are provided solely to the department for planning, management, and stewardship of natural area preserves and natural resources conservation areas.

(14) \$187,000 of the general fund—state appropriation for fiscal year 2002 and \$188,000 of the general fund—state appropriation for fiscal year 2003 are

provided solely to the department for maintenance and stewardship of public lands.

(15) \$100,000 of the general fund—state appropriation for fiscal year 2002, \$100,000 of the general fund—state appropriation for fiscal year 2003, and \$400,000 of the aquatic lands enhancement account appropriation are provided solely for spartina control.

(16) Fees approved by the board of natural resources for filing and recording surveys are authorized to exceed the fiscal growth factor under RCW 43.135.055 for 2002.

(17) The entire state toxics control account appropriation is provided solely for the department to meet its settlement obligation with the U.S. Environmental Protection Agency for the clean-up of the Thea Foss Waterway.

~~((19))~~ (18) \$250,000 of the resource management cost account—state appropriation and \$250,000 of the forest development account—state appropriation are deposited in the contract harvesting revolving account—nonappropriated to implement Substitute Senate Bill No. 6257 (contract harvesting). If Suhstitute Senate Bill No. 6257 is not enacted the deposit in this subsection shall not occur.

~~((20))~~ (19) Within the amounts appropriated in this section, the department shall review the current procedures used to mobilize resources to fight forest fires under the state mobilization plan and through the department of natural resources. The review must include recommendations to ensure that the people closest to a fire are called first, to allow private contractors to be mobilized under the state mobilization plan, and to identify other efficiencies. The department shall review recent studies regarding ways to improve forest fire fighting in the state. The department shall consult with representatives of private contractors, fire districts, municipal fire departments, the state fire marshal, appropriate federal agencies, and other interested groups in developing the recommendations. The department shall report their findings and recommendations to the appropriate committees of the legislature by January 1, 2003.

~~((21))~~ (20) \$4,000,000 of the resource management cost account appropriation is provided solely for the purposes of RCW 79.64.020 and is contingent upon the establishment, management, and protection of the following marine reserves: Tidelands and bedlands adjacent to Cherry Point in Whatcom county; tidelands and bedlands surrounding Maury Island in King county; tidelands, bedlands, harbor areas, and waterways adjacent to the Puyallup River delta, within Commencement Bay in Pierce county; tidelands and bedlands surrounding Cypress Island in Skagit county; and tidelands and bedlands within Fidalgo Bay in Skagit county.

~~((22))~~ (21) Within the amounts appropriated in this section, the department shall update the Washington State University asset diversification plan to diversify at least ten percent of the commercial forest land base within ten years and report recommendations for implementing the plan to the appropriate committees of the legislature by December 1, 2002.

*Sec. 305. 2002 c 371 s 309 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF AGRICULTURE

General Fund—State Appropriation (FY 2002) \$7,815,000

General Fund—State Appropriation (FY 2003)	(\$7,434,000)
	<u>\$7,377,000</u>
General Fund—Federal Appropriation	\$7,441,000
General Fund—Private/Local Appropriation	\$1,110,000
Aquatic Lands Enhancement Account—State Appropriation	\$2,304,000
State Toxics Control Account—State <i>Appropriation</i>	(\$2,917,000)
	<u>\$2,484,000</u>
TOTAL APPROPRIATION	(\$29,021,000)
	<u>\$28,531,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$36,000 of the general fund—state appropriation for fiscal year 2002 and \$37,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for implementation of the Puget Sound work plan and agency action item DOA-01.

(2) \$1,077,000 of the state toxics control account appropriation and \$298,000 of the agricultural local account are provided solely to establish a program to monitor pesticides in surface water, sample and analyze surface waters for pesticide residues, evaluate pesticide exposure on salmon species listed under the provisions of the endangered species act, and implement actions needed to protect salmonids.

(3) \$1,480,000 of the aquatic lands enhancement account appropriation is provided solely to initiate a plan to eradicate infestations of spartina in Puget Sound, Hood Canal, and Grays Harbor and begin the reduction in spartina infestations in Willapa Bay.

(4) \$75,000 of the general fund—state appropriation for fiscal year 2002, \$75,000 of the general fund—state appropriation for fiscal year 2003, and \$150,000 of the general fund—federal appropriation are provided solely to the small farm and direct marketing program to support small farms in complying with federal, state, and local regulations, facilitating access to food processing centers, and assisting with grant funding requests.

(5) \$700,000 of the general fund—federal appropriation and \$700,000 of the general fund—private/local appropriation are provided solely to implement chapter 324, Laws of 2001 (Substitute House Bill No. 1891, marketing of agriculture).

(6) ((\$450,000)) \$242,000 of the state toxics control account—state appropriation is provided solely for deposit in the agricultural local nonappropriated account for the plant pest account to reimburse county horticultural pest and disease boards for the costs of pest control activities, including tree removal, conducted under their existing authorities in chapters 15.08 and 15.09 RCW.

(7) The district manager for district two as defined in WAC 16-458-075 shall transfer four hundred fifty thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred must be derived from fees collected for state inspections of tree fruits and shall be used solely to reimburse county horticultural pest and

disease boards in district two for the cost of pest control activities, including tree removal, conducted under their existing authority in chapters 15.08 and 15.09 RCW. The transfer of funds shall occur by July 1, 2001. On June 30, 2003, any unexpended portion of the four hundred fifty thousand dollars shall be returned to the fruit and vegetable district fund.

*Sec. 305 was partially vetoed. See message at end of chapter.

**PART IV
TRANSPORTATION**

Sec. 401. 2002 c 371 s 401 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING

General Fund—State Appropriation (FY 2002)	\$5,366,000
General Fund—State Appropriation (FY 2003)	(\$5,300,000)
	<u>\$5,350,000</u>
Architects' License Account—State	
Appropriation	(\$684,000)
	<u>\$687,000</u>
Cemetery Account—State Appropriation	(\$200,000)
	<u>\$203,000</u>
Professional Engineers' Account—State	
Appropriation	(\$3,102,000)
	<u>\$3,116,000</u>
Real Estate Commission—State Appropriation	(\$6,837,000)
	<u>\$6,868,000</u>
Master License Account—State Appropriation	(\$8,278,000)
	<u>\$8,306,000</u>
Uniform Commercial Code Account—State	
Appropriation	(\$2,900,000)
	<u>\$2,914,000</u>
Real Estate Education Account—State	
Appropriation	\$276,000
Funeral Directors and Embalmers Account—State	
Appropriation	(\$459,000)
	<u>\$460,000</u>
Washington Real Estate Research Account	
Appropriation	\$307,000
Data Processing Revolving Account—State	
Appropriation	\$23,000
Derelict Vessel Removal Account—State	
Appropriation	\$86,000
TOTAL APPROPRIATION	(\$33,818,000)
	<u>\$33,962,000</u>

The appropriations in this section are subject to the following conditions and limitations: In accordance with RCW 43.24.086, it is the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business. For each licensing program covered by RCW 43.24.086, the department shall set fees at levels sufficient to fully cover the cost of

administering the licensing program, including any costs associated with policy enhancements funded in the 2001-03 fiscal biennium. Pursuant to RCW 43.135.055, during the 2001-03 fiscal biennium, the department may increase fees in excess of the fiscal growth factor if the increases are necessary to fully fund the costs of the licensing programs.

Sec. 402. 2002 c 371 s 402 (uncodified) is amended to read as follows:

FOR THE STATE PATROL

General Fund—State Appropriation (FY 2002)	\$21,567,000
General Fund—State Appropriation (FY 2003)	(\$7,933,000)
	<u>\$8,271,000</u>
General Fund—Federal Appropriation	(\$4,178,000)
	<u>\$4,818,000</u>
General Fund—Private/Local Appropriation	\$369,000
Death Investigations Account—State	
Appropriation	\$4,024,000
Public Safety and Education Account—State	
Appropriation	(\$14,769,000)
	<u>\$14,748,000</u>
County Criminal Justice Assistance Account—State	
Appropriation	\$2,870,000
Municipal Criminal Justice Assistance Account—	
State Appropriation	\$1,367,000
Fire Service Trust Account—State	
Appropriation	\$125,000
Fire Service Training Account—State	
Appropriation	\$6,328,000
State Toxics Control Account—State	
Appropriation	\$461,000
Violence Reduction and Drug Enforcement Account—	
State Appropriation	\$274,000
Fingerprint Identification Account—State	
Appropriation	(\$5,316,000)
	<u>\$6,028,000</u>
TOTAL APPROPRIATION	(\$69,581,000)
	<u>\$71,250,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$354,000 of the public safety and education account appropriation is provided solely for additional law enforcement and security coverage on the west capitol campus.

(2) When a program within the agency is supported by more than one fund and one of the funds is the state general fund, the agency shall charge its expenditures in such a manner as to ensure that each fund is charged in proportion to its support of the program. The agency may adopt guidelines for the implementation of this subsection. The guidelines may account for federal matching requirements, budget provisos, or other requirements to spend other moneys in a particular manner.

(3) \$100,000 of the public safety and education account appropriation is provided solely for the implementation of Substitute Senate Bill No. 5896 (DNA testing of evidence). If the bill is not enacted by June 30, 2001, the amount provided in this subsection shall lapse.

(4) \$1,419,000 of the public safety and education account—state appropriation is provided solely for combating the proliferation of methamphetamine labs. The amounts in this subsection are provided solely for the following activities: (a) The establishment of a regional methamphetamine enforcement, training, and education program; (b) additional members for the statewide methamphetamine incident response team; and (c) two forensic scientists with the necessary equipment to perform lab analysis in the crime laboratory division.

(5) Within the amounts appropriated in this section, funding is provided to implement Substitute House Bill No. 2468 (offender DNA database).

(6) \$375,000 of the general fund--state appropriation for fiscal year 2003 is provided solely for additional DNA testing kits.

**PART V
EDUCATION**

Sec. 501. 2002 c 371 s 501 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

(1) STATE AGENCY OPERATIONS

General Fund—State Appropriation (FY 2002).....	\$12,302,000
General Fund—State Appropriation (FY 2003).....	\$12,000,000
General Fund—Federal Appropriation.....	(\$53,760,000)
	<u>\$15,248,000</u>
TOTAL APPROPRIATION	(\$78,062,000)
	<u>\$39,550,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(a) \$11,385,000 of the general fund—state appropriation for fiscal year 2002 and \$11,101,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the operation and expenses of the office of the superintendent of public instruction. Of this amount, a maximum of \$350,000 is provided in each fiscal year for upgrading information systems including the general apportionment and student information systems.

(b) \$486,000 of the general fund—state appropriation for fiscal year 2002 and \$481,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the operation and expenses of the state board of education, including basic education assistance activities. Of the general fund—state appropriation, \$100,000 is provided solely for certificate of mastery development and validation.

(c) \$431,000 of the general fund—state appropriation for fiscal year 2002 and \$418,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the operation and expenses of the Washington professional educator standards board.

(d) \$49,000 of the general fund—state appropriation for fiscal year 2003 is provided solely to support the joint task force on local effort assistance created by House Bill No. 3011.

(2) STATEWIDE PROGRAMS

General Fund—State Appropriation (FY 2002)	\$17,280,000
General Fund—State Appropriation (FY 2003)	(\$9,990,000)
	<u>\$9,898,000</u>
General Fund—Federal Appropriation	(\$85,395,000)
	<u>\$139,140,000</u>
TOTAL APPROPRIATION	(\$112,665,000)
	<u>\$166,318,000</u>

The appropriations in this subsection are provided solely for the statewide programs specified in this subsection and are subject to the following conditions and limitations:

(a) HEALTH AND SAFETY

(i) A maximum of \$150,000 of the general fund—state appropriation for fiscal year 2002 is provided for alcohol and drug prevention programs pursuant to RCW 66.08.180.

(ii) A maximum \$2,621,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$2,542,000 of the general fund—state appropriation for fiscal year 2003 are provided for a corps of nurses located at educational service districts, as determined by the superintendent of public instruction, to be dispatched to the most needy schools to provide direct care to students, health education, and training for school staff.

(iii) A maximum of \$100,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$97,000 of the general fund—state appropriation for fiscal year 2003 are provided to create a school safety center subject to the following conditions and limitations.

(A) The safety center shall: Disseminate successful models of school safety plans and cooperative efforts; provide assistance to schools to establish a comprehensive safe school plan; select models of cooperative efforts that have been proven successful; act as an information dissemination and resource center when an incident occurs in a school district either in Washington or in another state; coordinate activities relating to school safety; review and approve manuals and curricula used for school safety models and training; and develop and maintain a school safety information web site.

(B) The school safety center shall be established in the office of the superintendent of public instruction. The superintendent of public instruction shall participate in a school safety center advisory committee that includes representatives of educators, classified staff, principals, superintendents, administrators, the American society for industrial security, the state criminal justice training commission, and others deemed appropriate and approved by the school safety center advisory committee. Members of the committee shall be chosen by the groups they represent. In addition, the Washington association of sheriffs and police chiefs shall appoint representatives of law enforcement to participate on the school safety center advisory committee. The advisory committee shall select a chair.

(C) The school safety center advisory committee shall develop a training program, using the best practices in school safety, for all school safety personnel.

(iv) A maximum of \$113,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$100,000 of the general fund—state appropriation for fiscal year 2003 are provided for a school safety training program provided by the criminal justice training commission subject to the following conditions and limitations:

(A) The criminal justice training commission with assistance of the school safety center advisory committee established in section 2(b)(iii) of this section shall develop manuals and curricula for a training program for all school safety personnel.

(B) The Washington state criminal justice training commission, in collaboration with the advisory committee, shall provide the school safety training for all school administrators and school safety personnel, including school safety personnel hired after the effective date of this section.

(v) A maximum of \$250,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$243,000 of the general fund—state appropriation for fiscal year 2003 are provided for training in school districts regarding the prevention of bullying and harassment. The superintendent of public instruction shall use the funds to develop a model bullying and harassment prevention policy and training materials for school and educational service districts. The information may be disseminated in a variety of ways, including workshops and other staff development activities such as videotape or broadcasts.

(vi) A maximum of \$6,048,000 of the general fund—state appropriation for fiscal year 2002 is provided for a safety allocation to districts subject to the following conditions and limitations:

(A) The funds shall be allocated at a maximum rate of \$6.36 per year per full-time equivalent K-12 student enrolled in each school district in the prior school year.

(B) Districts shall expend funds allocated under this section to develop and implement strategies identified in a comprehensive safe school plan pursuant to House Bill No. 1818 (student safety) or Senate Bill No. 5543 (student safety). If neither bill is enacted by June 30, 2001, expenditures of the safety allocation shall be subject to (i), (ii), and (iii) of this subsection (a)(vi)(B).

(i) School districts shall use the funds for school safety purposes and are encouraged to prioritize the use of funds allocated under this section for the development, by September 1, 2002, of school-based comprehensive safe school plans that include prevention, intervention, all-hazards/crisis response, and post crisis recovery components. When developing comprehensive safe school plans, school districts are encouraged to use model school safety plans as developed by the school safety center. Implementation of comprehensive safe school plans may include, but is not limited to, employing or contracting for building security monitors in schools during school hours and school events; research-based early prevention and intervention programs; training for school staff, including security personnel; equipment; school safety hotlines; before, during, and after-school student and staff safety; minor building renovations related to student and staff safety and security; and other purposes identified in the comprehensive safe school plan.

(ii) Each school may conduct an evaluation of its comprehensive safe school plan and conduct reviews, drills, or simulated practices in coordination with local fire, law enforcement, and medical emergency management agencies.

(iii) By September 1, 2002, school districts shall provide the superintendent of public instruction information regarding the purposes for which the safety allocation funding was used and the status of the comprehensive safe school plans for the schools in the school district.

(vii) A maximum of \$200,000 of the general fund—state appropriation for fiscal year 2002, a maximum of \$194,000 of the general fund—state appropriation for fiscal year 2003, and \$400,000 of the general fund—federal appropriation transferred from the department of health are provided for a program that provides grants to school districts for media campaigns promoting sexual abstinence and addressing the importance of delaying sexual activity, pregnancy, and childbearing until individuals are ready to nurture and support their children. Grants to the school districts shall be for projects that are substantially designed and produced by students. The grants shall require a local private sector match equal to one-half of the state grant, which may include in-kind contribution of technical or other assistance from consultants or firms involved in public relations, advertising, broadcasting, and graphics or video production or other related fields.

(viii) A maximum of \$150,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$145,000 of the general fund—state appropriation for fiscal year 2003 are provided for a nonviolence and leadership training program provided by the institute for community leadership. The program shall provide the following:

(A) Statewide nonviolence leadership coaches training program for certification of educational employees and community members in nonviolence leadership workshops;

(B) Statewide leadership nonviolence student exchanges, training, and speaking opportunities for student workshop participants; and

(C) A request for proposal process, with up to 80 percent funding, for nonviolence leadership workshops serving at least 12 school districts with direct programming in 36 elementary, middle, and high schools throughout Washington state.

(ix) A maximum of \$1,500,000 of the general fund—state appropriation for fiscal year 2002 is provided for school district petitions to juvenile court for truant students as provided in RCW 28A.225.030 and 28A.225.035. Allocation of this money to school districts shall be based on the number of petitions filed.

(b) TECHNOLOGY

(i) A maximum of \$2,000,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$1,940,000 of the general fund—state appropriation for fiscal year 2003 are provided for K-20 telecommunications network technical support in the K-12 sector to prevent system failures and avoid interruptions in school utilization of the data processing and video-conferencing capabilities of the network. These funds may be used to purchase engineering and advanced technical support for the network. A maximum of \$650,000 of this amount may be expended for state-level administration and staff training on the K-20 network.

(ii) A maximum of \$617,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$1,079,000 of the general fund—state appropriation for fiscal year 2003 are provided for the Washington state leadership assistance for science education reform (LASER) regional partnership coordinated at the Pacific Science Center.

(c) GRANTS AND ALLOCATIONS

(i) A maximum of \$25,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$1,916,000 of the general fund—state appropriation for fiscal year 2003 are provided for Senate Bill No. 5695 (alternative certification routes). If the bill is not enacted by June 30, 2001, the amount provided in this subsection shall lapse. The stipend allocation per teacher candidate and mentor pair shall not exceed \$28,300. The professional educator standards board shall report to the education committees of the legislature by December 15, 2002, on the districts applying for partnership grants, the districts receiving partnership grants, and the number of interns per route enrolled in each district.

(ii) A maximum of \$31,500 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$31,000 of the general fund—state appropriation for fiscal year 2003 are provided for operation of the Cispus environmental learning center.

(iii) A maximum of \$150,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$146,000 of the general fund—state appropriation for fiscal year 2003 are provided for the Washington civil liberties education program.

(iv) A maximum of \$2,150,000 of the general fund—state appropriation for fiscal year 2002 is provided for complex need grants. The maximum grants for eligible districts are specified in LEAP Document 30C as developed on April 27, 1997, at 03:00 hours.

(v) A maximum of \$1,377,000 of the general fund—state appropriation for fiscal year 2002 is provided for educational centers, including state support activities. \$50,000 of this amount for fiscal year 2002 is provided to help stabilize funding through distribution among existing education centers that are currently funded by the state at an amount less than \$50,000 a fiscal year.

(vi) A maximum of \$50,000 of the general fund—state appropriation for fiscal year 2002 is provided for an organization in southwest Washington that received funding from the Spokane educational center in the 1995-97 biennium and provides educational services to students who have dropped out of school.

(vii) A maximum of \$1,262,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$1,224,000 of the general fund—state appropriation for fiscal year 2003 are provided for in-service training and educational programs conducted by the Pacific Science Center.

(viii) A maximum of \$100,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$97,000 of the general fund—state appropriation for fiscal year 2003 are provided to support vocational student leadership organizations.

(ix) (~~(\$9,900,000)~~) \$13,955,000 of the general fund—federal appropriation is provided for the Washington Reads project to enhance high quality reading instruction and school programs.

(x) A maximum of \$150,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$146,000 of the general fund—state appropriation for fiscal year 2003 are provided for the World War II oral history project.

(xi) \$13,942,000 of the general fund—federal appropriation is provided for school renovation grants for school districts with urgent school renovation needs, special education-related renovations, and technology related renovations.

(xii) (~~(\$4,962,000)~~) \$4,698,000 of the general fund—federal appropriation is provided for LINKS technology challenge grants to integrate educational reform with state technology systems and development of technology products that enhance professional development and classroom instruction.

(xiii) (~~(\$536,000)~~) \$1,763,000 of the general fund—federal appropriation is provided for the advanced placement fee program to increase opportunities for low-income students and under-represented populations to participate in advanced placement courses and to increase the capacity of schools to provide advanced placement courses to students.

(xiv) (~~(\$12,318,000)~~) \$8,197,000 of the general fund—federal appropriation is provided for comprehensive school reform demonstration projects to provide grants to low-income schools for improving student achievement through adoption and implementation of research-based curricula and instructional programs.

(xv) (~~(\$2,612,000)~~) \$2,473,000 of the general fund—federal appropriation is provided for teacher quality enhancement through provision of consortia grants to school districts and higher education institutions to improve teacher preparation and professional development.

Sec. 502. 2002 c 371 s 502 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR	
GENERAL APPORTIONMENT General Fund—State Appropriation (FY 2002)	
	\$3,786,124,000
General Fund—State Appropriation (FY 2003)	((\$3,711,897,000))
	<u>\$3,728,589,000</u>
TOTAL APPROPRIATION	((\$7,498,021,000))
	<u>\$7,514,713,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Allocations for certificated staff salaries for the 2001-02 and 2002-03 school years shall be determined using formula-generated staff units calculated pursuant to this subsection. Staff allocations for small school enrollments in (d) through (f) of this subsection shall be reduced for vocational full-time equivalent enrollments. Staff allocations for small school enrollments in grades K-6 shall be the greater of that generated under (a) of this subsection, or under (d) and (e) of this subsection. Certificated staffing allocations shall be as follows:

(a) On the basis of each 1,000 average annual full-time equivalent enrollments, excluding full-time equivalent enrollment otherwise recognized for certificated staff unit allocations under (c) through (f) of this subsection:

(i) Four certificated administrative staff units per thousand full-time equivalent students in grades K-12;

(ii) 49 certificated instructional staff units per thousand full-time equivalent students in grades K-3;

(iii) Forty-six certificated instructional staff units per thousand full-time equivalent students in grades 4-12; and

(iv) An additional 4.2 certificated instructional staff units for grades K-3 and an additional 7.2 certificated instructional staff units for grade 4. Any funds allocated for the additional certificated units provided in this subsection (iv) shall not be considered as basic education funding;

(v) For class size reduction and expanded learning opportunities under the better schools program, an additional 2.2 certificated instructional staff units for the 2001-02 school year and an additional 0.8 certificated instructional staff units for the 2002-03 school year for grades K-4 per thousand full-time equivalent students. Funds allocated for these additional certificated units shall not be considered as basic education funding. The allocation may be used for reducing class sizes in grades K-4 or to provide additional classroom contact hours for kindergarten, before-and-after-school programs, weekend school programs, summer school programs, and intercession opportunities to assist elementary school students in meeting the essential academic learning requirements and student assessment performance standards. For purposes of this subsection, additional classroom contact hours provided by teachers beyond the normal school day under a supplemental contract shall be converted to a certificated full-time equivalent by dividing the classroom contact hours by 900.

(A) Funds provided under this subsection (2)(a)(iv) and (v) in excess of the amount required to maintain the statutory minimum ratio established under RCW 28A.150.260(2)(b) shall be allocated only if the district documents an actual ratio in grades K-4 equal to or greater than 55.4 certificated instructional staff per thousand full-time equivalent students in the 2001-02 school year and 54.0 certificated instructional staff per thousand full-time equivalent students in the 2002-03 school year. For any school district documenting a lower certificated instructional staff ratio, the allocation shall be based on the district's actual grades K-4 certificated instructional staff ratio achieved in that school year, or the statutory minimum ratio established under RCW 28A.150.260(2)(b), if greater;

(B) Districts at or above 51.0 certificated instructional staff per one thousand full-time equivalent students in grades K-4 may dedicate up to 1.3 of the 55.4 funding ratio in the 2001-02 school year, and up to 1.3 of the 54.0 funding ratio in the 2002-03 school year, to employ additional classified instructional assistants assigned to basic education classrooms in grades K-4. For purposes of documenting a district's staff ratio under this section, funds used by the district to employ additional classified instructional assistants shall be converted to a certificated staff equivalent and added to the district's actual certificated instructional staff ratio. Additional classified instructional assistants, for the purposes of this subsection, shall be determined using the 1989-90 school year as the base year;

(C) Any district maintaining a ratio in grades K-4 equal to or greater than 55.4 certificated instructional staff per thousand full-time equivalent students in the 2001-02 school year, and a ratio equal to or greater than 54.0 certificated instructional staff per thousand full-time equivalent students in the 2002-03 school year, may use allocations generated under this subsection (2)(a)(iv) and (v) in excess of that required to maintain the minimum ratio established under RCW 28A.150.260(2)(b) to employ additional basic education certificated instructional staff or classified instructional assistants in grades 5-6. Funds allocated under this subsection (2)(a)(iv) and (v) shall only be expended to reduce class size in grades K-6. No more than 1.3 of the certificated instructional funding ratio amount may be expended for provision of classified instructional assistants;

(b) For school districts with a minimum enrollment of 250 full-time equivalent students whose full-time equivalent student enrollment count in a given month exceeds the first of the month full-time equivalent enrollment count by 5 percent, an additional state allocation of 110 percent of the share that such increased enrollment would have generated had such additional full-time equivalent students been included in the normal enrollment count for that particular month;

(c)(i) On the basis of full-time equivalent enrollment in:

(A) Vocational education programs approved by the superintendent of public instruction, a maximum of 0.92 certificated instructional staff units and 0.08 certificated administrative staff units for each 19.5 full-time equivalent vocational students; and

(B) Skills center programs meeting the standards for skills center funding established in January 1999 by the superintendent of public instruction, 0.92 certificated instructional staff units and 0.08 certificated administrative units for each 16.67 full-time equivalent vocational students;

(ii) Vocational full-time equivalent enrollment shall be reported on the same monthly basis as the enrollment for students eligible for basic support, and payments shall be adjusted for reported vocational enrollments on the same monthly basis as those adjustments for enrollment for students eligible for basic support; and

(iii) For the 2002-03 school year, indirect cost charges by a school district to vocational-secondary programs shall not exceed 15 percent of the combined basic education and vocational enhancement allocations of state funds;

(d) For districts enrolling not more than twenty-five average annual full-time equivalent students in grades K-8, and for small school plants within any school district which have been judged to be remote and necessary by the state board of education and enroll not more than twenty-five average annual full-time equivalent students in grades K-8:

(i) For those enrolling no students in grades 7 and 8, 1.76 certificated instructional staff units and 0.24 certificated administrative staff units for enrollment of not more than five students, plus one-twentieth of a certificated instructional staff unit for each additional student enrolled; and

(ii) For those enrolling students in grades 7 or 8, 1.68 certificated instructional staff units and 0.32 certificated administrative staff units for enrollment of not more than five students, plus one-tenth of a certificated instructional staff unit for each additional student enrolled;

(e) For specified enrollments in districts enrolling more than twenty-five but not more than one hundred average annual full-time equivalent students in grades K-8, and for small school plants within any school district which enroll more than twenty-five average annual full-time equivalent students in grades K-8 and have been judged to be remote and necessary by the state board of education:

(i) For enrollment of up to sixty annual average full-time equivalent students in grades K-6, 2.76 certificated instructional staff units and 0.24 certificated administrative staff units; and

(ii) For enrollment of up to twenty annual average full-time equivalent students in grades 7 and 8, 0.92 certificated instructional staff units and 0.08 certificated administrative staff units;

(f) For districts operating no more than two high schools with enrollments of less than three hundred average annual full-time equivalent students, for enrollment in grades 9-12 in each such school, other than alternative schools:

(i) For remote and necessary schools enrolling students in any grades 9-12 but no more than twenty-five average annual full-time equivalent students in grades K-12, four and one-half certificated instructional staff units and one-quarter of a certificated administrative staff unit;

(ii) For all other small high schools under this subsection, nine certificated instructional staff units and one-half of a certificated administrative staff unit for the first sixty average annual full time equivalent students, and additional staff units based on a ratio of 0.8732 certificated instructional staff units and 0.1268 certificated administrative staff units per each additional forty-three and one-half average annual full time equivalent students.

Units calculated under (f)(ii) of this subsection shall be reduced by certificated staff units at the rate of forty-six certificated instructional staff units and four certificated administrative staff units per thousand vocational full-time equivalent students;

(g) For each nonhigh school district having an enrollment of more than seventy annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-8 program or a grades 1-8 program, an additional one-half of a certificated instructional staff unit; and

(h) For each nonhigh school district having an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-6 program or a grades 1-6 program, an additional one-half of a certificated instructional staff unit.

(3) Allocations for classified salaries for the 2001-02 and 2002-03 school years shall be calculated using formula-generated classified staff units determined as follows:

(a) For enrollments generating certificated staff unit allocations under subsection (2)(d) through (h) of this section, one classified staff unit for each three certificated staff units allocated under such subsections;

(b) For all other enrollment in grades K-12, including vocational full-time equivalent enrollments, one classified staff unit for each sixty average annual full-time equivalent students; and

(c) For each nonhigh school district with an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, an additional one-half of a classified staff unit.

(4) Fringe benefit allocations shall be calculated at a rate of 10.76 percent in the 2001-02 school year and 9.57 percent in the 2002-03 school year for certificated salary allocations provided under subsection (2) of this section, and a rate of 12.73 percent in the 2001-02 school year and 12.36 percent in the 2002-03 school year for classified salary allocations provided under subsection (3) of this section.

(5) Insurance benefit allocations shall be calculated at the maintenance rate specified in section 504(3) of this act, based on the number of benefit units determined as follows:

(a) The number of certificated staff units determined in subsection (2) of this section; and

(b) The number of classified staff units determined in subsection (3) of this section multiplied by 1.152. This factor is intended to adjust allocations so that, for the purposes of distributing insurance benefits, full-time equivalent classified employees may be calculated on the basis of 1440 hours of work per year, with no individual employee counted as more than one full-time equivalent.

(6)(a) For nonemployee-related costs associated with each certificated staff unit allocated under subsection (2)(a), (b), and (d) through (h) of this section, there shall be provided a maximum of \$8,519 per certificated staff unit in the 2001-02 school year and a maximum of \$8,604 per certificated staff unit in the 2002-03 school year.

(b) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(A) of this section, there shall be provided a maximum of \$20,920 per certificated staff unit in the 2001-02 school year and a maximum of \$21,129 per certificated staff unit in the 2002-03 school year.

(c) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(B) of this section, there shall be provided a maximum of \$16,233 per certificated staff unit in the 2001-02 school year and a maximum of \$16,395 per certificated staff unit in the 2002-03 school year.

(7) Allocations for substitute costs for classroom teachers shall be distributed at a maintenance rate of \$494.34 for the 2001-02 and 2002-03 school years per allocated classroom teachers exclusive of salary increase amounts provided in section 504 of this act. Solely for the purposes of this subsection, allocated classroom teachers shall be equal to the number of certificated instructional staff units allocated under subsection (2) of this section, multiplied by the ratio between the number of actual basic education certificated teachers and the number of actual basic education certificated instructional staff reported statewide for the prior school year.

(8) Any school district board of directors may petition the superintendent of public instruction by submission of a resolution adopted in a public meeting to reduce or delay any portion of its basic education allocation for any school year. The superintendent of public instruction shall approve such reduction or delay if it does not impair the district's financial condition. Any delay shall not be for more than two school years. Any reduction or delay shall have no impact on levy authority pursuant to RCW 84.52.0531 and local effort assistance pursuant to chapter 28A.500 RCW.

(9) The superintendent may distribute a maximum of \$6,424,000 outside the basic education formula during fiscal years 2002 and 2003 as follows:

(a) For fire protection for school districts located in a fire protection district as now or hereafter established pursuant to chapter 52.04 RCW, a maximum of \$480,000 may be expended in fiscal year 2002 and a maximum of \$485,000 may be expended in fiscal year 2003;

(b) For summer vocational programs at skills centers, a maximum of \$2,098,000 may be expended for the 2001-02 fiscal year and a maximum of \$2,035,000 for the 2003 fiscal year;

(c) A maximum of \$341,000 may be expended for school district emergencies; and

(d) A maximum of \$500,000 for fiscal year 2002 and \$485,000 for fiscal year 2003 may be expended for programs providing skills training for secondary students who are enrolled in extended day school-to-work programs, as approved by the superintendent of public instruction. The funds shall be allocated at a rate not to exceed \$500 per full-time equivalent student enrolled in those programs.

(10) For purposes of RCW 84.52.0531, the increase per full-time equivalent student in state basic education appropriations provided under this act, including appropriations for salary and benefits increases, is 2.5 percent from the 2000-01 school year to the 2001-02 school year.

(11) For purposes of RCW 84.52.0531, the increase in appropriations per full-time equivalent student provided in this act, including appropriations for salary and benefits increases, is 2.9 percent from the 2001-02 school year to the 2002-03 school year.

(12) If two or more school districts consolidate and each district was receiving additional basic education formula staff units pursuant to subsection (2)(b) through (h) of this section, the following shall apply:

(a) For three school years following consolidation, the number of basic education formula staff units shall not be less than the number of basic education formula staff units received by the districts in the school year prior to the consolidation; and

(b) For the fourth through eighth school years following consolidation, the difference between the basic education formula staff units received by the districts for the school year prior to consolidation and the basic education formula staff units after consolidation pursuant to subsection (2)(a) through (h) of this section shall be reduced in increments of twenty percent per year.

Sec. 503. 2002 c 371 s 504 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL EMPLOYEE COMPENSATION ADJUSTMENTS

General Fund—State Appropriation (FY 2002)	\$124,903,000
General Fund—State Appropriation (FY 2003)	(\$255,910,000)
	<u>\$256,809,000</u>
General Fund—Federal Appropriation (FY 2003)	(\$191,000)
	<u>\$246,000</u>
TOTAL APPROPRIATION	(\$381,004,000)
	<u>\$381,958,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) A total of (~~(\$329,316,000)~~) \$330,239,000 is provided for a cost of living adjustment for state formula staff units of 3.7 percent effective September 1, 2001, and 3.6 percent effective on September 1, 2002, consistent with the provisions of chapter 4, Laws of 2001 (Initiative Measure No. 732). The appropriations include associated incremental fringe benefit allocations at rates of 10.12 percent for school year 2001-02 and 8.93 percent for school year 2002-03 for certificated staff and 9.23 percent for school year 2001-02 and 8.86 percent for school year 2002-03 for classified staff.

(a) The appropriations in this section include the increased portion of salaries and incremental fringe benefits for all relevant state-funded school programs in part V of this act, in accordance with chapter 4, Laws of 2001 (Initiative Measure No. 732). Salary adjustments for state employees in the office of superintendent of public instruction and the education reform program are provided in part VII of this act. Increases for general apportionment (basic education) are based on the salary allocation schedules and methodology in section 502 of this act. Increases for special education result from increases in each district's basic education allocation per student. Increases for educational service districts and institutional education programs are determined by the superintendent of public instruction using the methodology for general apportionment salaries and benefits in section 502 of this act.

(b) The appropriations in this section provide cost-of-living and incremental fringe benefit allocations based on formula adjustments as follows:

	School Year	
	2001-02	2002-03
Pupil Transportation (per weighted pupil mile)	\$0.77	\$1.54
Highly Capable (per formula student)	\$8.71	\$16.70
Transitional Bilingual Education (per eligible bilingual student)	\$22.63	\$44.74
Learning Assistance (per entitlement unit)	\$11.19	\$22.26
Substitute Teacher (allocation per teacher, section 502(7))	\$18.29	\$36.75

(2) This act appropriates general fund—state funds and other funds for the purpose of providing the annual salary cost-of-living increase required by section 2, chapter 4, Laws of 2001 (Initiative Measure No. 732) for teachers and other school district employees in the state-funded salary base. For employees not included in the state-funded salary base, the annual salary cost-of-living increase may be provided by school districts from the federal funds appropriated in this act and local revenues, including the adjusted levy base as provided in RCW 84.52.053 and section 502 of this act, and state discretionary funds provided under this act.

(3) (~~(\$51,688,000)~~) \$51,719,000 is provided for adjustments to insurance benefit allocations. The maintenance rate for insurance benefit allocations is \$427.73 per month for the 2001-02 and 2002-03 school years. The appropriations in this section provide for a rate increase to \$455.27 per month

for the 2001-02 school year and \$457.07 per month for the 2002-03 school year at the following rates:

	School Year	
	2001-02	2002-03
Pupil Transportation (per weighted pupil mile)	\$0.25	\$0.27
Highly Capable (per formula student)	\$1.74	\$1.81
Transitional Bilingual Education (per eligible bilingual student)	\$4.46	\$4.75
Learning Assistance (per entitlement unit)	\$3.51	\$3.73

(4) The rates specified in this section are subject to revision each year by the legislature.

Sec. 504. 2002 c 371 s 505 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PUPIL TRANSPORTATION

General Fund—State Appropriation (FY 2002).....	\$192,402,000
General Fund—State Appropriation (FY 2003).....	(\$193,293,000)
	<u>\$212,019,000</u>
TOTAL APPROPRIATION.....	(\$385,695,000)
	<u>\$404,421,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) A maximum of \$767,000 of this fiscal year 2002 appropriation and a maximum of \$752,000 of the fiscal year 2003 appropriation may be expended for regional transportation coordinators and related activities. The transportation coordinators shall ensure that data submitted by school districts for state transportation funding shall, to the greatest extent practical, reflect the actual transportation activity of each district.

(3) \$5,000 of the fiscal year 2002 appropriation and \$5,000 of the fiscal year 2003 appropriation are provided solely for the transportation of students enrolled in "choice" programs. Transportation shall be limited to low-income students who are transferring to "choice" programs solely for educational reasons.

(4) Allocations for transportation of students shall be based on reimbursement rates of \$37.07 per weighted mile in the 2001-02 school year and \$37.12 per weighted mile in the 2002-03 school year exclusive of salary and benefit adjustments provided in section 504 of this act. Allocations for transportation of students transported more than one radius mile shall be based on weighted miles as determined by superintendent of public instruction multiplied by the per mile reimbursement rates for the school year pursuant to the formulas adopted by the superintendent of public instruction. Allocations for transportation of students living within one radius mile shall be based on the number of enrolled students in grades kindergarten through five living within

one radius mile of their assigned school multiplied by the per mile reimbursement rate for the school year multiplied by 1.29.

Sec. 505. 2001 2nd sp.s. c 7 s 506 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL FOOD SERVICE PROGRAMS

General Fund—State Appropriation (FY 2002).....	\$3,100,000
General Fund—State Appropriation (FY 2003).....	\$3,100,000
General Fund—Federal Appropriation.....	(\$225,630,000)
	<u>\$236,435,000</u>
TOTAL APPROPRIATION.....	(\$231,830,000)
	<u>\$242,635,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$3,000,000 of the general fund—state appropriation for fiscal year 2002 and \$3,000,000 of the general fund—state appropriation for fiscal year 2003 are provided for state matching money for federal child nutrition programs.

(2) \$100,000 of the general fund—state appropriation for fiscal year 2002 and \$100,000 of the 2003 fiscal year appropriation are provided for summer food programs for children in low-income areas.

Sec. 506. 2002 c 371 s 506 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SPECIAL EDUCATION PROGRAMS

General Fund—State Appropriation (FY 2002).....	\$420,165,000
General Fund—State Appropriation (FY 2003).....	(\$408,761,000)
	<u>\$410,263,000</u>
General Fund—Federal Appropriation.....	(\$256,407,000)
	<u>\$295,015,000</u>
TOTAL APPROPRIATION.....	(\$1,085,333,000)
	<u>\$1,125,443,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Funding for special education programs is provided on an excess cost basis, pursuant to RCW 28A.150.390. School districts shall ensure that special education students as a class receive their full share of the general apportionment allocation accruing through sections 502 and 504 of this act. To the extent a school district cannot provide an appropriate education for special education students under chapter 28A.155 RCW through the general apportionment allocation, it shall provide services through the special education excess cost allocation funded in this section.

(2)(a) Effective with the 2001-02 school year, the superintendent of public instruction shall change the S-275 personnel reporting system and all related accounting requirements to ensure that:

(i) Special education students are basic education students first;

(ii) As a class, special education students are entitled to the full basic education allocation; and

(iii) Special education students are basic education students for the entire school day.

(b) Effective with the 2001-02 school year, the S-275 and accounting changes shall supercede any prior excess cost methodologies and shall be required of all school districts.

(3) Each fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(4) The superintendent of public instruction shall distribute state funds to school districts based on two categories: The optional birth through age two program for special education eligible developmentally delayed infants and toddlers, and the mandatory special education program for special education eligible students ages three to twenty-one. A "special education eligible student" means a student receiving specially designed instruction in accordance with a properly formulated individualized education program.

(5)(a) For the 2001-02 and 2002-03 school years, the superintendent shall make allocations to each district based on the sum of:

(i) A district's annual average headcount enrollment of developmentally delayed infants and toddlers ages birth through two, multiplied by the district's average basic education allocation per full-time equivalent student, multiplied by 1.15; and

(ii) A district's annual average full-time equivalent basic education enrollment multiplied by the funded enrollment percent determined pursuant to subsection (6)(b) of this section, multiplied by the district's average basic education allocation per full-time equivalent student multiplied by 0.9309.

(b) For purposes of this subsection, "average basic education allocation per full-time equivalent student" for a district shall be based on the staffing ratios required by RCW 28A.150.260 and shall not include enhancements, secondary vocational education, or small schools.

(6) The definitions in this subsection apply throughout this section.

(a) "Annual average full-time equivalent basic education enrollment" means the resident enrollment including students enrolled through choice (RCW 28A.225.225) and students from nonhigh districts (RCW 28A.225.210) and excluding students residing in another district enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(b) "Enrollment percent" means the district's resident special education annual average enrollment, excluding the birth through age two enrollment, as a percent of the district's annual average full-time equivalent basic education enrollment.

(i) For the 2001-02 school year, each district's funded enrollment percent shall be the lesser of the district's actual enrollment percent or 12.7 percent.

(ii) For the 2002-03 school year, each district's general fund—state funded special education enrollment shall be the lesser of the district's actual enrollment percent or 12.7 percent. Increases in enrollment percent from 12.7 percent to 13.0 percent shall be funded from the general fund—federal appropriation.

(7) At the request of any interdistrict cooperative of at least 15 districts in which all excess cost services for special education students of the districts are provided by the cooperative, the maximum enrollment percent shall be calculated in accordance with subsection (6)(b) of this section, and shall be

calculated in the aggregate rather than individual district units. For purposes of this subsection, the average basic education allocation per full-time equivalent student shall be calculated in the aggregate rather than individual district units.

(8) Safety net funding shall be awarded by the state safety net oversight committee subject to the following conditions and limitations:

(a) A maximum of \$8,500,000 of the general fund—state appropriation and a maximum of \$3,500,000 of the general fund—federal appropriation for fiscal year 2002 are provided as safety net funding for districts with demonstrated needs for state special education funding beyond the amounts provided in subsection (5) of this section.

(b) The safety net oversight committee shall first consider the needs of districts adversely affected by the 1995 change in the special education funding formula. Awards shall be based on the lesser of the amount required to maintain the 1994-95 state special education excess cost allocation to the school district in aggregate or on a dollar per funded student basis.

(c) The committee shall then consider unmet needs for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas. In the determination of need, the committee shall also consider additional available revenues from federal and local sources. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(d) The maximum allowable indirect cost for calculating safety net eligibility may not exceed the federal restricted indirect cost rate for the district plus one percent.

(e) Safety net awards shall be adjusted based on the percent of potential medicaid eligible students billed as calculated by the superintendent in accordance with chapter 318, Laws of 1999.

(f) Safety net awards must be adjusted for any audit findings or exceptions related to special education funding.

(g) The superintendent may expend up to \$120,000 of the amounts provided in this subsection (8) to provide staff assistance to the committee in analyzing applications for safety net funds received by the committee.

(9) For fiscal year 2003 to the extent necessary, \$12,873,000 of the general fund—federal appropriation is provided for safety net awards for districts with demonstrated needs for state special education funding beyond the amounts provided in subsection (5) of this section. If safety net awards exceed the amount appropriated in this subsection (9), the superintendent shall expend all available federal discretionary funds necessary to meet this need. Safety net funds shall be awarded by the state safety net oversight committee subject to the following conditions and limitations:

(a) The committee shall consider unmet needs for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas. In the determination of need, the committee shall also consider additional available revenues from federal and local sources. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(b) The committee shall then consider the extraordinary high cost needs of one or more individual special education students. Differences in costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(c) The maximum allowable indirect cost for calculating safety net eligibility may not exceed the federal restricted indirect cost rate for the district plus one percent.

(d) Safety net awards shall be adjusted based on the percent of potential medicaid eligible students billed as calculated by the superintendent in accordance with chapter 318, Laws of 1999.

(e) Safety net awards must be adjusted for any audit findings or exceptions related to special education funding.

(f) The superintendent may expend up to \$120,000 of the amount provided from the general fund—federal appropriation in this subsection (9) to provide staff assistance to the committee in analyzing applications for safety net funds received by the committee.

(10) The superintendent of public instruction may adopt such rules and procedures as are necessary to administer the special education funding and safety net award process. Prior to revising any standards, procedures, or rules, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature.

(11) The safety net oversight committee appointed by the superintendent of public instruction shall consist of:

(a) One staff from the office of superintendent of public instruction;

(b) Staff of the office of the state auditor;

(c) Staff of the office of the financial management; and

(d) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding.

(12) To the extent necessary, in fiscal year 2002, \$2,250,000 of the general fund—federal appropriation shall be expended for safety net funding to meet the extraordinary needs of one or more individual special education students. If safety net awards to meet the extraordinary needs exceed \$2,250,000 of the general fund—federal appropriation, the superintendent shall expend all available federal discretionary funds necessary to meet this need. General fund—state funds shall not be expended for this purpose.

(13) A maximum of \$678,000 may be expended from the general fund—state appropriations to fund 5.43 full-time equivalent teachers and 2.1 full-time equivalent aides at children's orthopedic hospital and medical center. This amount is in lieu of money provided through the home and hospital allocation and the special education program.

(14) \$1,000,000 of the general fund—federal appropriation is provided for projects to provide special education students with appropriate job and independent living skills, including work experience where possible, to facilitate their successful transition out of the public school system. The funds provided by this subsection shall be from federal discretionary grants.

(15) The superintendent shall maintain the percentage of federal flow-through to school districts at 85 percent for the 2001-02 school year. For the 2002-03 school year, the superintendent shall allocate the federal funds as specified in this section and shall adjust federal flow-through funds accordingly.

In addition to other purposes, school districts may use increased federal funds for high-cost students, for purchasing regional special education services from educational service districts, and for staff development activities particularly relating to inclusion issues.

(16) A maximum of \$1,200,000 of the general fund—federal appropriation may be expended by the superintendent for projects related to use of inclusion strategies by school districts for provision of special education services. The superintendent shall prepare an information database on laws, best practices, examples of programs, and recommended resources. The information may be disseminated in a variety of ways, including workshops and other staff development activities.

(17) A school district may carry over from one year to the next year up to 10 percent of general fund—state funds allocated under this program; however, carry over funds shall be expended in the special education program.

(18) The superintendent of public instruction shall implement the recommendations of the joint legislative audit and review committee study on special education (report 01-11) only to the extent that funds have been specifically provided therefor.

Sec. 507. 2002 c 371 s 507 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR TRAFFIC SAFETY EDUCATION PROGRAMS

General Fund—State Appropriation (FY 2002)	\$3,765,000
General Fund—State Appropriation (FY 2003)	(\$512,000)
	<u>\$513,000</u>

~~((Public Safety and Education Account~~

Appropriation	\$6,567,000)
TOTAL APPROPRIATION	(\$10,844,000)
	<u>\$4,278,000</u>

~~((+))~~ The general fund—state appropriations in this section are subject to the following conditions and limitations:

~~((a)) (1)~~ The appropriations include such funds as are necessary to complete the school year ending in each fiscal year and for prior fiscal year adjustments.

~~((b)) (2)~~ A maximum of \$253,000 of the fiscal year 2002 general fund appropriation may be expended for regional traffic safety education coordinators.

~~((c)) (3)~~ Allocations to provide tuition assistance for students eligible for free and reduced price lunch who complete the program shall be a maximum of \$203.97 per eligible student in the 2001-02 school year.

~~((2) The public safety and education account appropriation in this section is subject to the following conditions and limitations:~~

~~(a) The public safety and education account appropriation shall lapse if House Bill No. 2573 (traffic safety education) is not enacted by June 30, 2002.~~

~~(b) If House Bill No. 2573 is enacted by June 30, 2002, districts shall receive the following allocations:~~

~~(i) The maximum basic state allocation per student completing the program shall be \$148.00 in the 2002-03 school year.~~

(ii) Additional allocations to provide tuition assistance for students eligible for free and reduced price lunch who complete the program shall be a maximum of \$71.00 per eligible student in the 2002-03 school year.

(c) ~~A maximum of \$254,000 may be expended for regional traffic safety education coordinators.~~)

Sec. 508. 2002 c 371 s 509 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR LOCAL EFFORT ASSISTANCE

General Fund—State Appropriation (FY 2002)	\$140,932,000
General Fund—State Appropriation (FY 2003)	(\$154,931,000)
	<u>\$155,788,000</u>
TOTAL APPROPRIATION	(\$295,863,000)
	<u>\$296,720,000</u>

The appropriations in this section are subject to the following conditions and limitations:

Calendar year 2003 local effort assistance calculations under chapter 28A.500 RCW shall be adjusted by multiplying allocations and maximum eligibility for each district by 0.99 as authorized by House Bill No. 3011.

Sec. 509. 2002 c 371 s 510 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR INSTITUTIONAL EDUCATION PROGRAMS

General Fund—State Appropriation (FY 2002)	\$19,073,000
General Fund—State Appropriation (FY 2003)	(\$18,658,000)
	<u>\$17,844,000</u>
General Fund—Federal Appropriation	\$8,548,000
TOTAL APPROPRIATION	(\$46,279,000)
	<u>\$45,465,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Each general fund—state fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) State funding provided under this section is based on salaries and other expenditures for a 220-day school year. The superintendent of public instruction shall monitor school district expenditure plans for institutional education programs to ensure that districts plan for a full-time summer program.

(3) State funding for each institutional education program shall be based on the institution's annual average full-time equivalent student enrollment. Staffing ratios for each category of institution shall remain the same as those funded in the 1995-97 biennium.

(4) The funded staffing ratios for education programs for juveniles age 18 or less in department of corrections facilities shall be the same as those provided in the 1997-99 biennium.

(5) \$141,000 of the general fund—state appropriation for fiscal year 2002 and ~~(\$139,000)~~ \$226,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to maintain at least one certificated instructional staff and related support services at an institution whenever the K-12 enrollment

is not sufficient to support one full-time equivalent certificated instructional staff to furnish the educational program. The following types of institutions are included: Residential programs under the department of social and health services for developmentally disabled juveniles, programs for juveniles under the department of corrections, and programs for juveniles under the juvenile rehabilitation administration.

(6) Ten percent of the funds allocated for each institution may be carried over from one year to the next.

Sec. 510. 2002 c 371 s 511 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PROGRAMS FOR HIGHLY CAPABLE STUDENTS

General Fund—State Appropriation (FY 2002)	\$6,470,000
General Fund—State Appropriation (FY 2003)	(\$6,229,000)
	<u>\$6,246,000</u>
TOTAL APPROPRIATION	(\$12,699,000)
	<u>\$12,716,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Allocations for school district programs for highly capable students shall be distributed at a maximum rate of \$327.22 per funded student for the 2001-02 school year and ~~(\$313.07)~~ \$313.12 per funded student for the 2002-03 school year, exclusive of salary and benefit adjustments pursuant to section 504 of this act. The number of funded students shall be a maximum of two percent of each district's full-time equivalent basic education enrollment.

(3) \$175,000 of the fiscal year 2002 appropriation and \$170,000 of the fiscal year 2003 appropriation are provided for the centrum program at Fort Worden state park.

(4) \$93,000 of the fiscal year 2002 appropriation and \$90,000 of the fiscal year 2003 appropriation are provided for the Washington imagination network and future problem-solving programs.

Sec. 511. 2002 c 371 s 512 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR MISCELLANEOUS PURPOSES UNDER THE ELEMENTARY AND SECONDARY SCHOOL IMPROVEMENT ACT AND THE NO CHILD LEFT BEHIND ACT

General Fund—Federal Appropriation	(\$201,737,000)
	<u>\$199,660,000</u>

Sec. 512. 2002 c 371 s 513 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—EDUCATION REFORM PROGRAMS

General Fund—State Appropriation (FY 2002)	\$36,880,000
General Fund—State Appropriation (FY 2003)	(\$30,150,000)
	<u>\$30,269,000</u>
General Fund—Federal Appropriation	\$60,571,000

TOTAL APPROPRIATION	(\$127,601,000)
	<u>\$127,720,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$322,000 of the general fund—state appropriation for fiscal year 2002 and \$312,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the academic achievement and accountability commission.

(2) \$12,209,000 of the general fund—state appropriation for fiscal year 2002, \$8,872,000 of the general fund—state appropriation for fiscal year 2003, and \$4,000,000 of the general fund—federal appropriation are provided for development and implementation of the Washington assessments of student learning. Up to \$689,000 of the appropriation may be expended for data analysis and data management of test results.

(3) \$1,095,000 of the fiscal year 2002 general fund—state appropriation and \$548,000 of the fiscal year 2003 general fund—state appropriation are provided solely for training of paraprofessional classroom assistants and certificated staff who work with classroom assistants as provided in RCW 28A.415.310.

(4) \$4,695,000 of the general fund—state appropriation for fiscal year 2002 and \$2,348,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for mentor teacher assistance, including state support activities, under RCW 28A.415.250 and 28A.415.260, and for a mentor academy. Up to \$200,000 of the amount in this subsection may be used each fiscal year to operate a mentor academy to help districts provide effective training for peer mentors. Funds for the teacher assistance program shall be allocated to school districts based on the number of first year beginning teachers.

(a) A teacher assistance program is a program that provides to a first year beginning teacher peer mentor services that include but are not limited to:

(i) An orientation process and individualized assistance to help beginning teachers who have been hired prior to the start of the school year prepare for the start of a school year;

(ii) The assignment of a peer mentor whose responsibilities to the beginning teacher include but are not limited to constructive feedback, the modeling of instructional strategies, and frequent meetings and other forms of contact;

(iii) The provision by peer mentors of strategies, training, and guidance in critical areas such as classroom management, student discipline, curriculum management, instructional skill, assessment, communication skills, and professional conduct. A district may provide these components through a variety of means including one-on-one contact and workshops offered by peer mentors to groups, including cohort groups, of beginning teachers;

(iv) The provision of release time, substitutes, mentor training in observation techniques, and other measures for both peer mentors and beginning teachers, to allow each an adequate amount of time to observe the other and to provide the classroom experience that each needs to work together effectively;

(v) Assistance in the incorporation of the essential academic learning requirements into instructional plans and in the development of complex teaching strategies, including strategies to raise the achievement of students with diverse learning styles and backgrounds; and

(vi) Guidance and assistance in the development and implementation of a professional growth plan. The plan shall include a professional self-evaluation component and one or more informal performance assessments. A peer mentor may not be involved in any evaluation under RCW 28A.405.100 of a beginning teacher whom the peer mentor has assisted through this program.

(b) In addition to the services provided in (a) of this subsection, an eligible peer mentor program shall include but is not limited to the following components:

(i) Strong collaboration among the peer mentor, the beginning teacher's principal, and the beginning teacher;

(ii) Stipends for peer mentors and, at the option of a district, for beginning teachers. The stipends shall not be deemed compensation for the purposes of salary lid compliance under RCW 28A.400.200 and are not subject to the continuing contract provisions of Title 28A RCW; and

(iii) To the extent that resources are available for this purpose and that assistance to beginning teachers is not adversely impacted, the program may serve second year and more experienced teachers who request the assistance of peer mentors.

(5) \$2,025,000 of the general fund—state appropriation for fiscal year 2002 and \$1,964,000 of the general fund—state appropriation for fiscal year 2003 are provided for improving technology infrastructure, monitoring and reporting on school district technology development, promoting standards for school district technology, promoting statewide coordination and planning for technology development, and providing regional educational technology support centers, including state support activities, under chapter 28A.650 RCW. The superintendent of public instruction shall coordinate a process to facilitate the evaluation and provision of online curriculum courses to school districts which includes the following: Creation of a general listing of the types of available online curriculum courses; a survey conducted by each regional educational technology support center of school districts in its region regarding the types of online curriculum courses desired by school districts; a process to evaluate and recommend to school districts the best online courses in terms of curriculum, student performance, and cost; and assistance to school districts in procuring and providing the courses to students.

(6) \$3,600,000 of the general fund—state appropriation for fiscal year 2002 and \$3,600,000 of the general fund—state appropriation for fiscal year 2003 are provided for grants to school districts to provide a continuum of care for children and families to help children become ready to learn. Grant proposals from school districts shall contain local plans designed collaboratively with community service providers. If a continuum of care program exists in the area in which the school district is located, the local plan shall provide for coordination with existing programs to the greatest extent possible. Grant funds shall be allocated pursuant to RCW 70.190.040.

(7) \$2,500,000 of the general fund—state appropriation for fiscal year 2002 and \$2,500,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the meals for kids program under RCW 28A.235.145 through 28A.235.155.

(8) \$1,409,000 of the general fund—state appropriation for fiscal year 2002 and \$705,000 of the general fund—state appropriation for fiscal year 2003 are

provided solely for the leadership internship program for superintendents, principals, and program administrators.

(9) \$1,828,000 of the general fund—state appropriation for fiscal year 2002 and \$1,773,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the mathematics helping corps subject to the following conditions and limitations:

(a) In order to increase the availability and quality of technical mathematics assistance statewide, the superintendent of public instruction shall employ mathematics school improvement specialists to provide assistance to schools and districts. The specialists shall be hired by and work under the direction of a statewide school improvement coordinator. The mathematics improvement specialists shall serve on a rotating basis from one to three years and shall not be permanent employees of the superintendent of public instruction.

(b) The school improvement specialists shall provide the following:

(i) Assistance to schools to disaggregate student performance data and develop improvement plans based on those data;

(ii) Consultation with schools and districts concerning their performance on the Washington assessment of student learning and other assessments emphasizing the performance on the mathematics assessments;

(iii) Consultation concerning curricula that aligns with the essential academic learning requirements emphasizing the academic learning requirements for mathematics, the Washington assessment of student learning, and meets the needs of diverse learners;

(iv) Assistance in the identification and implementation of research-based instructional practices in mathematics;

(v) Staff training that emphasizes effective instructional strategies and classroom-based assessment for mathematics;

(vi) Assistance in developing and implementing family and community involvement programs emphasizing mathematics; and

(vii) Other assistance to schools and school districts intended to improve student mathematics learning.

(10) A maximum of \$500,000 of the general fund—state appropriation for fiscal year 2002 and a maximum of \$485,000 of the general fund—state appropriation for fiscal year 2003 are provided for summer accountability institutes offered by the superintendent of public instruction and the academic achievement and accountability commission. The institutes shall provide school district staff with training in the analysis of student assessment data, information regarding successful district and school teaching models, research on curriculum and instruction, and planning tools for districts to improve instruction in reading, mathematics, language arts, and guidance and counseling.

(11) \$3,930,000 of the general fund—state appropriation for fiscal year 2002 and \$3,714,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the Washington reading corps subject to the following conditions and limitations:

(a) Grants shall be allocated to schools and school districts to implement proven, research-based mentoring and tutoring programs in reading for low-performing students in grades K-6. If the grant is made to a school district, the principals of schools enrolling targeted students shall be consulted concerning design and implementation of the program.

(b) The programs may be implemented before, after, or during the regular school day, or on Saturdays, summer, intercessions, or other vacation periods.

(c) Two or more schools may combine their Washington reading corps programs.

(d) A program is eligible for a grant if it meets the following conditions:

(i) The program employs methods of teaching and student learning based on reliable reading/literacy research and effective practices;

(ii) The program design is comprehensive and includes instruction, ongoing student assessment, professional development, parental/community involvement, and program management aligned with the school's reading curriculum;

(iii) It provides quality professional development and training for teachers, staff, and volunteer mentors and tutors;

(iv) It has measurable goals for student reading aligned with the essential academic learning requirements; and

(v) It contains an evaluation component to determine the effectiveness of the program.

(e) Funding priority shall be given to low-performing schools.

(f) Beginning and end-of-program testing data shall be available to determine the effectiveness of funded programs and practices. Common evaluative criteria across programs, such as grade-level improvements shall be available for each reading corps program. The superintendent of public instruction shall provide program evaluations to the governor and the appropriate committees of the legislature. Administrative and evaluation costs may be assessed from the annual appropriation for the program.

(g) Grants provided under this section may be used by schools and school districts for expenditures from September 2001 through August 31, 2003.

(12) \$375,000 of the general fund—state appropriation for fiscal year 2002 and (~~\$725,000~~) \$844,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for salary bonuses for teachers who attain certification by the national board for professional teaching standards, subject to the following conditions and limitations:

(a) Teachers who have attained certification by the national board shall receive an annual bonus not to exceed \$3,500.

(b) The annual bonus shall be paid in a lump sum amount and shall not be included in the definition of "earnable compensation" under RCW 41.32.010(10).

(c) It is the intent of the legislature that teachers achieving certification by the national board of professional teaching standards will receive no more than four annual bonus payments for attaining certification by the national board.

(13) \$625,000 of the general fund—state appropriation for fiscal year 2002 and \$313,000 of the general fund—state appropriation for fiscal year 2003 are provided for a principal support program. The office of the superintendent of public instruction may contract with an independent organization to administer the program. The program shall include: (a) Development of an individualized professional growth plan for a new principal or principal candidate; and (b) participation of a mentor principal who works over a period of between one and three years with the new principal or principal candidate to help him or her build the skills identified as critical to the success of the professional growth plan.

(14) \$71,000 of the general fund—state appropriation for fiscal year 2002 and \$71,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the second grade reading test. The funds shall be expended for assessment training for new second grade teachers and replacement of assessment materials.

(15) \$384,000 of the general fund—state appropriation for fiscal year 2002 and \$372,000 of the general fund—state appropriation for fiscal year 2003 are provided for the superintendent to assist schools in implementing high academic standards, aligning curriculum with these standards, and training teachers to use assessments to improve student learning. Funds may also be used to increase community and parental awareness of education reform.

(16) \$130,000 of the general fund—state appropriation for fiscal year 2002 and \$126,000 of the general fund—state appropriation for fiscal year 2003 are provided for the development and posting of web-based instructional tools, assessment data, and other information that assists schools and teachers implementing higher academic standards.

(17) \$1,000,000 of the general fund—state appropriation for fiscal year 2002 and \$1,746,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to the office of the superintendent of public instruction for focused assistance. The office of the superintendent of public instruction shall conduct educational audits of low-performing schools and enter into performance agreements between school districts and the office to implement the recommendations of the audit and the community. Of the amounts provided, \$219,000 of the fiscal year 2002 appropriation and \$201,000 of the fiscal year 2003 appropriation are provided to the office of the superintendent of public instruction for the administrative duties arising under this subsection. Each educational audit shall include recommendations for best practices and ways to address identified needs and shall be presented to the community in a public meeting to seek input on ways to implement the audit and its recommendations.

(18) \$100,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for grants to school districts to adopt or revise district-wide and school-level plans to achieve performance improvement goals established under RCW 28A.655.030, and to post a summary of the improvement plans on district websites using a common format provided by the office of the superintendent of public instruction.

(19) \$100,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for recognition plaques for schools that successfully met the fourth grade reading improvement goal established under RCW 28A.655.050.

(20) \$46,554,000 of the general fund—federal appropriation is provided for preparing, training, and recruiting high quality teachers and principals under Title II of the no child left behind act.

(21) \$6,591,000 of the general fund—federal appropriation is provided for the reading first program under Title I of the no child left behind act.

(22) In addition to amounts provided in subsection (2) of this section, \$3,426,000 of the general fund—federal appropriation is provided for the development of state assessments as required under Title VI of the no child left behind act.

Sec. 513. 2002 c 371 s 514 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR TRANSITIONAL BILINGUAL PROGRAMS

General Fund—State Appropriation (FY 2002)	\$42,767,000
General Fund—State Appropriation (FY 2003)	(\$44,734,000)
	<u>\$44,142,000</u>
General Fund—Federal Appropriation (FY 2003)	(\$20,280,000)
	<u>\$19,755,000</u>
TOTAL APPROPRIATION	(\$107,781,000)
	<u>\$106,664,000</u>

(1) The general fund—state appropriations in this section are subject to the following conditions and limitations:

(a) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(b) The superintendent shall distribute a maximum of \$684.36 per eligible bilingual student in the 2001-02 school year and \$674.69 in the 2002-03 school year, exclusive of salary and benefit adjustments provided in section 504 of this act.

(c) The superintendent may withhold up to \$295,000 in school year 2001-02 and up to \$700,000 in school year 2002-03, and adjust the per eligible pupil rates in subsection (2) of this section accordingly, for the central provision of assessments as provided in section 2(1) and (2) of Engrossed Second Substitute House Bill No. 2025.

(d) \$70,000 of the amounts appropriated in this section are provided solely to develop a system for the tracking of current and former transitional bilingual program students.

(e) Sufficient funding is provided to implement Engrossed Second Substitute House Bill No. 2025 (schools/bilingual instruction).

(2) The general fund—federal appropriation in this section is provided for migrant education, English language acquisition, and language enhancement grants under Title III of the no child left behind act.

Sec. 514. 2002 c 371 s 515 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR THE LEARNING ASSISTANCE PROGRAM

General Fund—State Appropriation (FY 2002)	\$71,342,000
General Fund—State Appropriation (FY 2003)	(\$64,614,000)
	<u>\$63,981,000</u>
General Fund—Federal Appropriation (FY 2003)	\$130,631,000
TOTAL APPROPRIATION	(\$266,587,000)
	<u>\$265,954,000</u>

(1) The general fund—state appropriations in this section are subject to the following conditions and limitations:

(a) Each general fund—state fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(b) Funding for school district learning assistance programs shall be allocated at maximum rates of \$407.39 per funded unit for the 2001-02 school

year and \$404.78 per funded unit for the 2002-03 school year exclusive of salary and benefit adjustments provided under section 504 of this act.

(c) For purposes of this section, "test results" refers to the district results from the norm-referenced test administered in the specified grade level. The norm-referenced test results used for the third and sixth grade calculations shall be consistent with the third and sixth grade tests required under RCW 28A.230.190 and 28A.230.193.

(d) A school district's general fund—state funded units for the 2001-02 school year shall be the sum of the following:

(i) The district's full-time equivalent enrollment in grades K-6, multiplied by the 5-year average 4th grade lowest quartile test results as adjusted for funding purposes in the school years prior to 1999-2000, multiplied by 0.92. As the 3rd grade test becomes available, it shall be phased into the 5-year average on a 1-year lag; and

(ii) The district's full-time equivalent enrollment in grades 7-9, multiplied by the 5-year average 8th grade lowest quartile test results as adjusted for funding purposes in the school years prior to 1999-2000, multiplied by 0.92. As the 6th grade test becomes available, it shall be phased into the 5-year average for these grades on a 1-year lag; and

(iii) The district's full-time equivalent enrollment in grades 10-11 multiplied by the 5-year average 11th grade lowest quartile test results, multiplied by 0.92. As the 9th grade test becomes available, it shall be phased into the 5-year average for these grades on a 1-year lag; and

(iv) If, in the prior school year, the district's percentage of October headcount enrollment in grades K-12 eligible for free and reduced price lunch exceeded the state average, subtract the state average percentage of students eligible for free and reduced price lunch from the district's percentage and multiply the result by the district's K-12 annual average full-time equivalent enrollment for the current school year multiplied by 22.3 percent.

(e)(i) A school district's general fund—state funded units for the 2002-03 school year shall be the sum of the following:

(A) The district's full-time equivalent enrollment in grades K-6, multiplied by the 5-year average 4th grade lowest quartile test results as adjusted for funding purposes in the school years prior to 1999-2000, multiplied by 0.82. As the 3rd grade test becomes available, it shall be phased into the 5-year average on a 1-year lag;

(B) The district's full-time equivalent enrollment in grades 7-9, multiplied by the 5-year average 8th grade lowest quartile test results as adjusted for funding purposes in the school years prior to 1999-2000, multiplied by 0.82. As the 6th grade test becomes available, it shall be phased into the 5-year average for these grades on a 1-year lag; and

(C) The district's full-time equivalent enrollment in grades 10-11 multiplied by the 5-year average 11th grade lowest quartile test results, multiplied by 0.82. As the 9th grade test becomes available, it shall be phased into the 5-year average for these grades on a 1-year lag; and

(D) If, in the prior school year, the district's percentage of October headcount enrollment in grades K-12 eligible for free and reduced price lunch exceeded the state average, subtract the state average percentage of students eligible for free and reduced price lunch from the district's percentage and

multiply the result by the district's K-12 annual average full-time equivalent enrollment for the current school year multiplied by 22.3 percent.

(ii) In addition to amounts allocated under (a) of this subsection, the superintendent shall provide additional amounts as follows:

(A) For school districts receiving less than a 3.0 percent increase in federal Title I Part A (basic program) funds, the multiplier in (i)(A), (B), and (C) of this subsection (e) shall be .92;

(B) For school districts not eligible for additional funds under (b)(i) of this subsection, and whose effective increase in federal Title I Part A (basic program) funds is less than 3.0 percent after taking into account the change in the multiplier from .92 to .82, an additional amount to provide a 3.0 percent increase.

(f) School districts may carry over from one year to the next up to 10 percent of general fund—state funds allocated under this program; however, carryover funds shall be expended for the learning assistance program.

(2) The general fund—federal appropriation in this section is provided for Title I Part A allocations of the no child left behind act of 2001.

Sec. 515. 2002 c 371 s 516 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—LOCAL ENHANCEMENT FUNDS

General Fund—State Appropriation (FY 2002)	\$19,663,000
General Fund—State Appropriation (FY 2003)	(\$3,541,000)
	<u>\$3,532,000</u>
TOTAL APPROPRIATION	(\$23,204,000)
	<u>\$23,195,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Funds are provided for local education program enhancements to meet educational needs as identified by the school district, including alternative education programs.

(3) Allocations for the 2001-02 school year shall be at a maximum annual rate of \$18.48 per full-time equivalent student. Allocations shall be made on the monthly apportionment payment schedule provided in RCW 28A.510.250 and shall be based on school district annual average full-time equivalent enrollment in grades kindergarten through twelve: PROVIDED, That for school districts enrolling not more than one hundred average annual full-time equivalent students, and for small school plants within any school district designated as remote and necessary schools, the allocations shall be as follows:

(a) Enrollment of not more than sixty average annual full-time equivalent students in grades kindergarten through six shall generate funding based on sixty full-time equivalent students;

(b) Enrollment of not more than twenty average annual full-time equivalent students in grades seven and eight shall generate funding based on twenty full-time equivalent students; and

(c) Enrollment of not more than sixty average annual full-time equivalent students in grades nine through twelve shall generate funding based on sixty full-time equivalent students.

(4) Funding provided pursuant to this section does not fall within the definition of basic education for purposes of Article IX of the state Constitution and the state’s funding duty thereunder.

(5) The superintendent shall not allocate up to one-fourth of a district’s funds under this section if:

(a) The district is not maximizing federal matching funds for medical services provided through special education programs, pursuant to RCW 74.09.5241 through 74.09.5256 (Title XIX funding); or

(b) The district is not in compliance in filing truancy petitions as required under chapter 312, Laws of 1995 and RCW 28A.225.030.

Sec. 516. 2002 c 371 s 518 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR STUDENT ACHIEVEMENT PROGRAM

Student Achievement Fund—State

Appropriation (FY 2002) \$180,837,000

Student Achievement Fund—State

Appropriation (FY 2003) ((~~\$210,312,000~~))

\$210,376,000

TOTAL APPROPRIATION ((~~\$391,149,000~~))

\$391,213,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The appropriation is allocated for the following uses as specified in chapter 28A.505 RCW as amended by chapter 3, Laws of 2001 (Initiative Measure No. 728):

(a) To reduce class size by hiring certificated elementary classroom teachers in grades K-4 and paying nonemployee-related costs associated with those new teachers;

(b) To make selected reductions in class size in grades 5-12, such as small high school writing classes;

(c) To provide extended learning opportunities to improve student academic achievement in grades K-12, including, but not limited to, extended school year, extended school day, before-and-after-school programs, special tutoring programs, weekend school programs, summer school, and all-day kindergarten;

(d) To provide additional professional development for educators including additional paid time for curriculum and lesson redesign and alignment, training to ensure that instruction is aligned with state standards and student needs, reimbursement for higher education costs related to enhancing teaching skills and knowledge, and mentoring programs to match teachers with skilled, master teachers. The funding shall not be used for salary increases or additional compensation for existing teaching duties, but may be used for extended year and extend day teaching contracts;

(e) To provide early assistance for children who need prekindergarten support in order to be successful in school; or

(f) To provide improvements or additions to school building facilities which are directly related to the class size reductions and extended learning opportunities under (a) through (c) of this subsection.

(2) Funding for school district student achievement programs shall be allocated at a maximum rate of \$190.19 per FTE student for the 2001-02 school year and ~~(\$219.84)~~ \$220.00 per FTE student for the 2002-03 school year. For the purposes of this section and in accordance with RCW 84.52.068, FTE student refers to the annual average full-time equivalent enrollment of the school district in grades kindergarten through twelve for the prior school year.

(3) The office of the superintendent of public instruction shall distribute ten percent of the annual allocation to districts each month for the months of September through June.

**PART VI
HIGHER EDUCATION**

Sec. 601. 2002 c 371 s 604 (uncodified) is amended to read as follows:

FOR UNIVERSITY OF WASHINGTON

General Fund—State Appropriation (FY 2002)	\$345,904,000
General Fund—State Appropriation (FY 2003)	(\$336,544,000)
	<u>\$333,770,000</u>
Death Investigations Account—State	
Appropriation	\$258,000
University of Washington Building Account—	
State Appropriation	\$1,103,000
Accident Account—State Appropriation	\$5,881,000
Medical Aid Account—State Appropriation	\$5,937,000
TOTAL APPROPRIATION	(\$695,627,000)
	<u>\$692,853,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The university may reallocate 10 percent of newly budgeted enrollments to campuses other than as specified by the legislature in section 602 of this act in order to focus on high demand areas. The university shall report the details of these reallocations to the office of financial management and the fiscal and higher education committees of the legislature for monitoring purposes by the 10th day of the academic quarter that follows the reallocation actions. The report shall provide details of undergraduate and graduate enrollments at the main campus and each of the branch campuses.

(2) \$2,000,000 of the general fund—state appropriation for fiscal year 2002 and \$2,000,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to create a state resource for technology education in the form of an institute located at the University of Washington, Tacoma. It is the intent of the legislature that at least ninety-nine of the full-time equivalent enrollments allocated to the university's Tacoma branch campus for the 2002-03 academic year may be used to establish the technology institute. The university will expand undergraduate and graduate degree programs meeting regional

technology needs including, but not limited to, computing and software systems. As a condition of these appropriations:

(a) The university will work with the state board for community and technical colleges, or individual colleges where necessary, to establish articulation agreements in addition to the existing associate of arts and associate of science transfer degrees. Such agreements shall improve the transferability of students and in particular, students with substantial applied information technology credits.

(b) The university will establish performance measures for recruiting, retaining and graduating students, including nontraditional students, and report back to the governor and legislature by September 2002 as to its progress and future steps.

(3) \$150,000 of the general fund—state appropriation for fiscal year 2002 and \$150,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for research faculty clusters in the advanced technology initiative program.

(4) The department of environmental health shall report to the legislature the historical, current, and anticipated use of funds provided from the accident and medical aid accounts. The report shall be submitted prior to the convening of the 2002 legislative session.

(5) \$258,000 of the death investigations account appropriation is provided solely for the forensic pathologist fellowship program.

(6) \$150,000 of the general fund—state appropriation for fiscal year 2002 and \$150,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of the Puget Sound work plan and agency action item UW-01.

(7) \$75,000 of the general fund—state appropriation for fiscal year 2002 and \$75,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the Olympic natural resource center.

(8) \$50,000 of the general fund—state appropriations are provided solely for the school of medicine to conduct a survey designed to evaluate characteristics, factors and probable causes for the high incidence of multiple sclerosis cases in Washington state.

(9) \$1,103,000 of the University of Washington building account—state appropriation is provided solely for the repair and reconstruction of the Urban Horticulture Center (Merrill Hall).

Sec.602. 2002 c 371 s 605 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY

General Fund—State Appropriation (FY 2002)	\$201,362,000
General Fund—State Appropriation (FY 2003)	(\$195,533,000)
	<u>\$193,807,000</u>
TOTAL APPROPRIATION	(\$396,895,000)
	<u>\$395,169,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The university may reallocate 10 percent of newly budgeted enrollments to campuses other than specified by the legislature in section 602 of this act in order to focus on high demand areas. The university will report the details of

these reallocations to the office of financial management and the fiscal and higher education committees of the legislature for monitoring purposes by the 10th day of the academic quarter that follows the reallocation actions. The report will provide details of undergraduate and graduate enrollments at the main campus and each of the branch campuses.

(2) \$150,000 of the general fund—state appropriation for fiscal year 2002 and \$150,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for research faculty clusters in the advanced technology initiative program.

(3) \$165,000 of the general fund—state appropriation for fiscal year 2002 and \$166,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the implementation of the Puget Sound work plan and agency action item WSU-01.

Sec. 603. 2002 c 371 s 606 (uncodified) is amended to read as follows:

FOR EASTERN WASHINGTON UNIVERSITY

General Fund—State Appropriation (FY 2002)	\$45,517,000
General Fund—State Appropriation (FY 2003)	(\$44,174,000)
	<u>\$43,724,000</u>
TOTAL APPROPRIATION	(\$89,691,000)
	<u>\$89,241,000</u>

Sec. 604. 2002 c 371 s 607 (uncodified) is amended to read as follows:

FOR CENTRAL WASHINGTON UNIVERSITY

General Fund—State Appropriation (FY 2002)	\$44,147,000
General Fund—State Appropriation (FY 2003)	(\$42,149,000)
	<u>\$41,425,000</u>
TOTAL APPROPRIATION	(\$86,296,000)
	<u>\$85,572,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$700,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the development and implementation of the university's enrollment stabilization recovery and growth plan. The university shall report back to the fiscal committees of the legislature, the office of financial management, and the higher education coordinating board at the end of each fiscal year with details of its actions and progress.

Sec. 605. 2002 c 371 s 608 (uncodified) is amended to read as follows:

FOR THE EVERGREEN STATE COLLEGE

General Fund—State Appropriation (FY 2002)	\$25,325,000
General Fund—State Appropriation (FY 2003)	(\$24,474,000)
	<u>\$24,188,000</u>
TOTAL APPROPRIATION	(\$49,799,000)
	<u>\$49,513,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) ~~((2))~~ \$75,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the institute for public policy to complete studies of services described in section 202(1), chapter 1, Laws of 2000 2nd sp. sess.

~~((3))~~ (2) \$11,000 of the general fund—state appropriation for fiscal year 2002 and \$54,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the institute for public policy to conduct an outcome evaluation pursuant to Substitute Senate Bill No. 5416 (drug-affected infants). The institute shall provide a report to the fiscal, health, and human services committees of the legislature by December 1, 2003. If the bill is not enacted by June 30, 2001, the amounts provided in this subsection shall be used to evaluate outcomes across state health and social service pilot projects and other national models involving women who have given birth to a drug-affected infant, comparing gains in positive birth outcomes for resources invested, in which case the institute's findings and recommendations will be provided by November 15, 2002.

~~((4))~~ (3) \$11,000 of the general fund—state appropriation for fiscal year 2002 and \$33,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the institute for public policy to evaluate partnership grant programs for alternative teacher certification pursuant to Engrossed Second Substitute Senate Bill No. 5695. An interim report shall be provided to the fiscal and education committees of the legislature by December 1, 2002, and a final report by December 1, 2004.

~~((5))~~ (4) \$60,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the institute for public policy to examine options for revising the state's funding formula for the learning assistance program to enhance accountability for school performance in meeting education reform goals. The institute shall submit its report to the appropriate legislative fiscal and policy committees by June 30, 2002.

~~((6))~~ (5) \$50,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the institute for public policy to study the prevalence and needs of families who are raising related children. The study shall compare services and policies of Washington state with other states that have a high rate of kinship care placements in lieu of foster care placements. The study shall identify possible changes in services and policies that are likely to increase appropriate kinship care placements. A report shall be provided to the fiscal and human services committees of the legislature by June 1, 2002.

~~((7))~~ (6) \$35,000 of the general fund—state appropriation for fiscal year 2002 and \$15,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the institute for public policy to examine various educational delivery models for providing services and education for students through the Washington state school for the deaf. The institute's report, in conjunction with the capacity planning study from the joint legislative audit and review committee, shall be submitted to the fiscal committees of the legislature by September 30, 2002.

~~((8))~~ (7) \$30,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the institute for public policy to examine the structure, policies, and recent experience in states where welfare recipients may attend college full-time as their required TANF work activity. The institute will provide findings and recommend how Washington could consider adding this feature in a targeted, cost-neutral manner that would complement the present-day WorkFirst efforts and caseload. The institute shall provide a report to the

human services, higher education, and fiscal committees of the legislature by November 15, 2001.

~~((9))~~ (8) \$75,000 of the general fund—state appropriation for fiscal year 2002 and \$75,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the institute for public policy to research and evaluate strategies for constraining the growth in state health expenditures. Specific research topics, approaches, and timelines shall be identified in consultation with the fiscal committees of the legislature.

~~((10))~~ (9) \$100,000 of the general fund—state appropriation for fiscal year 2002 is provided solely for the institute for public policy to conduct a comprehensive review of the costs and benefits of existing juvenile crime prevention and intervention programs. This evaluation shall also consider what changes could result in more cost-effective and efficient funding for juvenile crime prevention and intervention programs presently supported with state funds. The institute for public policy shall report its findings and recommendations to the appropriate legislative fiscal and policy committees by October 1, 2002.

Sec. 606. 2002 c 371 s 609 (uncodified) is amended to read as follows:

FOR WESTERN WASHINGTON UNIVERSITY

General Fund—State Appropriation (FY 2002)	\$59,732,000
General Fund—State Appropriation (FY 2003)	(\$58,418,000)
	<u>\$57,968,000</u>
TOTAL APPROPRIATION	(\$118,150,000)
	<u>\$117,700,000</u>

The appropriations in this section are subject to the following conditions and limitations:

~~((11))~~ \$753,000 of the general fund—state appropriation for fiscal year 2002 and \$980,400 of the general fund—state appropriation for fiscal year 2003 are provided solely for the operations of the North Snohomish, Island, Skagit (NSIS) higher education consortium.

Sec. 607. 2002 c 371 s 610 (uncodified) is amended to read as follows:

FOR THE HIGHER EDUCATION COORDINATING BOARD—POLICY COORDINATION AND ADMINISTRATION

General Fund—State Appropriation (FY 2002)	\$2,345,000
General Fund—State Appropriation (FY 2003)	(\$2,288,000)
	<u>\$2,259,000</u>
General Fund—Federal Appropriation	\$636,000
TOTAL APPROPRIATION	(\$5,269,000)
	<u>\$5,240,000</u>

The appropriations in this section are provided to carry out the policy coordination, planning, studies and administrative functions of the board and are subject to the following conditions and limitations:

(1) \$150,000 of the general fund—state appropriation for fiscal year 2002 and \$150,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to continue the teacher training pilot program pursuant to chapter 177, Laws of 1999.

(2) \$105,000 of the general fund—state appropriation for fiscal year 2002 and \$245,000 of the general fund—state appropriation for fiscal year 2003 are provided solely to continue a demonstration project to improve rural access to post-secondary education by bringing distance learning technologies into Jefferson county.

Sec. 608. 2002 c 371 s 612 (uncodified) is amended to read as follows:

FOR THE WORK FORCE TRAINING AND EDUCATION COORDINATING BOARD

General Fund—State Appropriation (FY 2002)	\$1,762,000
General Fund—State Appropriation (FY 2003)	(\$1,633,000)
	<u>\$1,629,000</u>
General Fund—Federal Appropriation	\$44,987,000
TOTAL APPROPRIATION	(\$48,382,000)
	<u>\$48,378,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$500,000 of the general fund—state appropriation for fiscal year 2002 and \$500,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for the operations and development of the inland northwest technology education center (INTEC) as a regional resource and model for the rapid deployment of skilled workers trained in the latest technologies for Washington. The board shall serve as an advisor to and fiscal agent for INTEC, and will report back to the governor and legislature by September 2002 as to the progress and future steps for INTEC as this new public-private partnership evolves.

Sec. 609. 2002 c 371 s 616 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE HISTORICAL SOCIETY

General Fund—State Appropriation (FY 2002)	\$2,899,000
General Fund—State Appropriation (FY 2003)	(\$3,035,000)
	<u>\$2,952,000</u>
TOTAL APPROPRIATION	(\$5,934,000)
	<u>\$5,851,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$90,000 of the general fund—state appropriation for fiscal year 2002 and \$285,000 of the general fund—state appropriation for fiscal year 2003 are provided solely for activities related to the Lewis and Clark Bicentennial.

Sec. 610. 2002 c 371 s 617 (uncodified) is amended to read as follows:

FOR THE EASTERN WASHINGTON STATE HISTORICAL SOCIETY

General Fund—State Appropriation (FY 2002)	\$1,674,000
General Fund—State Appropriation (FY 2003)	(\$1,489,000)
	<u>\$1,447,000</u>
TOTAL APPROPRIATION	(\$3,163,000)
	<u>\$3,121,000</u>

Sec. 611. 2002 c 371 s 619 (uncodified) is amended to read as follows:

FOR THE STATE SCHOOL FOR THE DEAF

General Fund—State Appropriation (FY 2002)	\$7,395,000
General Fund—State Appropriation (FY 2003)	(\$7,751,000)

	<u>\$7,698,000</u>
General Fund—Private/Local Appropriation	\$232,000
TOTAL APPROPRIATION	(((\$15,378,000)) <u>\$15,325,000</u>)

The appropriations in this section are subject to the following conditions and limitations: \$250,000 of the general fund—state appropriation for fiscal year 2003 is provided solely for additional staffing and other student safety measures at the school. The school will hire six additional staff, increase staff communications and accessibility, and implement a training program to enhance staff members' abilities to work with at-risk youth.

**PART VII
SPECIAL APPROPRIATIONS**

Sec. 701. 2002 c 371 s 701 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR DEBT SUBJECT TO THE DEBT LIMIT

General Fund—State Appropriation (FY 2002)	\$576,097,000
General Fund—State Appropriation (FY 2003)	(((\$622,540,000)) <u>\$582,500,000</u>)
State Building Construction Account—State Appropriation	(((\$7,999,000)) <u>\$3,882,000</u>)
<u>Debt-Limit General Fund Bond Retirement Account--</u> State Appropriation	<u>\$400,000</u>
Debt-Limit Reimbursable Bond Retire Account— State Appropriation	\$2,591,000
State Taxable Building Construction Account— State Appropriation	(((\$496,000)) <u>\$59,000</u>)
TOTAL APPROPRIATION	(((\$1,209,723,000)) <u>\$1,165,529,000</u>)

The appropriations in this section are subject to the following conditions and limitations: The general fund appropriations are for deposit into the debt-limit general fund bond retirement account. The appropriation for fiscal year ((2002)) 2003 shall be deposited in the debt-limit general fund bond retirement account by June 30, ((2002)) 2003.

Sec. 702. 2002 c 371 s 703 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR GENERAL OBLIGATION DEBT TO BE REIMBURSED AS PRESCRIBED BY STATUTE

General Fund—State Appropriation (FY 2002)	\$24,542,000
General Fund—State Appropriation (FY 2003)	\$26,706,000
Capitol Historic District Construction Account—State Appropriation	(((\$454,000))

	<u>\$136,000</u>
Higher Education Construction Account—State Appropriation	(((\$499,000))
	<u>\$330,000</u>
State Higher Education Construction Account— State Appropriation	(((\$50,000))
	<u>\$33,000</u>
State Vehicle Parking Account—State Appropriation	(((\$100,000))
	<u>\$1,000</u>
Nondebt-Limit Reimbursable Bond Retirement Account— State Appropriation	(((\$128,043,000))
	<u>\$124,199,000</u>
TOTAL APPROPRIATION	(((\$180,394,000))
	<u>\$175,947,000</u>

The appropriations in this section are subject to the following conditions and limitations: The general fund appropriation is for deposit into the nondebt-limit general fund bond retirement account.

Sec. 703. 2002 c 371 s 704 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES

General Fund—State Appropriation (FY 2002)	\$567,000
General Fund—State Appropriation (FY 2003)	\$658,000
Higher Education Construction Account—State Appropriation	(((\$77,000))
	<u>\$54,000</u>
State Higher Education Construction Account— State Appropriation	(((\$42,000))
	<u>\$5,000</u>
State Building Construction Account—State Appropriation	(((\$1,488,000))
	<u>\$667,000</u>
State Vehicle Parking Account—State Appropriation	(((\$10,000))
	<u>\$1,000</u>
Capitol Historic District Construction Account—State Appropriation	(((\$130,000))
	<u>\$22,000</u>
State Taxable Building Construction Account— State Appropriation	(((\$50,000))
	<u>\$51,000</u>
TOTAL APPROPRIATION	(((\$3,022,000))
	<u>\$2,025,000</u>

Sec. 704. 2002 c 371 s 712 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF RETIREMENT SYSTEMS—CONTRIBUTIONS TO RETIREMENT SYSTEMS. The appropriations in

this section are subject to the following conditions and limitations: The appropriations for the law enforcement officers' and fire fighters' retirement system shall be made on a monthly basis beginning July 1, 2001, consistent with chapter 41.45 RCW, and the appropriations for the judges and judicial retirement systems shall be made on a quarterly basis consistent with chapters 2.10 and 2.12 RCW.

(1) There is appropriated for state contributions to the law enforcement officers' and fire fighters' retirement system:

General Fund--State Appropriation (FY 2002)	\$15,437,000
General Fund--State Appropriation (FY 2003)	(\$16,208,000)
	<u>\$16,440,000</u>

The appropriations in this subsection are subject to the following conditions and limitations: The appropriations include reductions to reflect savings resulting from the implementation of state pension contribution rates effective April 1, 2002, as provided in House Bill No. 2782.

(2) There is appropriated for contributions to the judicial retirement system:

General Fund--State Appropriation (FY 2002)	\$6,000,000
General Fund--State Appropriation (FY 2003)	\$6,000,000

(3) There is appropriated for contributions to the judges retirement system:

General Fund--State Appropriation (FY 2002)	\$250,000
General Fund--State Appropriation (FY 2003)	\$250,000
TOTAL APPROPRIATION	(\$44,145,000)
	<u>\$44,377,000</u>

NEW SECTION. Sec. 705. A new section is added to 2001 2nd sp.s. c 7 (uncodified) to read as follows:

FOR THE LIABILITY ACCOUNT

General Fund--State Appropriation (FY 2003)	\$3,000,000
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***NEW SECTION. Sec. 706.** A new section is added to 2001 2nd sp.s. c 7 (uncodified) to read as follows:

AGENCY EXPENDITURES FOR TRAVEL, EQUIPMENT, AND PERSONAL SERVICE CONTRACTS. *The office of financial management shall reduce allotments for all agencies for personal service contracts, equipment, and travel by \$6,000,000 from 2001-03 biennial general fund appropriations and \$6,000,000 from appropriations from other funds. \$5,000,000 of the general fund allotment reduction and \$5,000,000 of the other funds allotment reduction shall be placed in unallotted status and remain unexpended. \$1,000,000 of the general fund allotment reduction and \$1,000,000 of the other funds allotment reduction is hereby appropriated to the governor to be used on an emergency basis to allocate to state agencies to fund critically necessary travel, equipment, and personal service contracts that cannot be funded from an agency's existing expenditure authority. Prior to receiving an allocation, an agency must demonstrate that the reductions cannot be achieved from the items listed in this section (equipment, contracts, and travel) nor from any other items in its budget (such as personnel and goods and services).*

*Sec. 706 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 707. A new section is added to 2001 2nd sp.s. c 7 (uncodified) to read as follows:*

STATE EMPLOYMENT. *(1) From the effective date of this act until the conclusion of the fiscal biennium ending June 30, 2003, and consistent with the governor's Executive Directive No. 02-04, state agencies of the executive branch shall not establish new staff positions except as specifically authorized by this supplemental appropriations act or fill vacant existing staff positions except as specifically authorized by this section.*

(2) Public safety agencies may fill two-thirds of staff positions becoming vacant; all other agencies may fill two-fifths of vacant positions. In filling vacant positions pursuant to this subsection, agencies shall place the highest priority on front-line positions engaged in service delivery to the public.

(3) Exceptions to subsections (1) and (2) of this section may be granted only by the governor and only for critical or emergent situations that threaten public health or safety, as determined by the governor. The governor shall notify the legislative fiscal committees within ten days of the granting of any exception under this subsection.

(4) This section applies to all agencies of the executive branch, including all boards, commissions, and agencies headed by elected officials. This section does not apply to the institutions of higher education and state institutional programs. It is the intent of the legislature that agencies of the legislative and judicial branches of state government shall also observe the employment policies established by this section, subject to such procedures as may be adopted by the legislative and judicial branches, respectively.

**Sec. 707 was vetoed. See message at end of chapter.*

Sec. 708. 2002 c 371 s 719 (uncodified) is amended to read as follows:

INCENTIVE SAVINGS—FY 2003. The sum of one hundred million dollars or so much thereof as may be available on June 30, 2003, from the total amount of unspent fiscal year 2003 state general fund appropriations is appropriated for the purposes of RCW 43.79.460 in the manner provided in this section.

(1) Of the total appropriated amount, one-half of that portion that is attributable to incentive savings, not to exceed twenty-five million dollars, is appropriated to the savings incentive account for the purpose of improving the quality, efficiency, and effectiveness of agency services, and credited to the agency that generated the savings.

(2) Of the total appropriated amount, any amount attributable to unspent general fund—state appropriations in the state need grant program, the state work study program, the Washington scholars program, and the Washington award for vocational excellence program is appropriated to the state financial aid account pursuant to Substitute House Bill No. 2914 (state financial aid account).

(3) The remainder of the total amount, not to exceed seventy-five million dollars, is appropriated to the education savings account.

(4) For purposes of this section, the total amount of unspent state general fund appropriations does not include the appropriations made in this section, amounts included in allotment reductions in sections 706, 707, 708, and 713 of this act and section 706 of this act, or any amounts included in across-the-board allotment reductions under RCW 43.88.110.

Sec. 709. 2002 c 371 s 726 (uncodified) is amended to read as follows:

FOR SUNDRY CLAIMS. The following sums, or so much thereof as may be necessary, are appropriated from the general fund, unless otherwise indicated, for relief of various individuals, firms, and corporations for sundry claims. These appropriations are to be disbursed on vouchers approved by the director of ~~((general administration))~~ financial management, except as otherwise provided, as follows:

(1) Reimbursement of criminal defendants acquitted on the basis of self-defense, pursuant to RCW 9A.16.110:

(a) Eythor Westman, claim number SCJ 02-01	\$7,000
(b) Stacey Julian, claim number SCJ 02-02	\$59,136
(c) Christopher Denney, claim number SCJ 02-03	\$11,598
(d) Onofre Vazquez, claim number SCJ 02-04	\$200
(e) William Voorhies, claim number SCJ 02-05	\$3,694
(f) Glenn Rowilson, claim number SCJ 02-06	\$14,395
(g) Frankie Doerr, claim number SCJ 02-07	\$9,100
(h) Ralph Howard, claim number SCJ 00-09	\$99,497
(i) Johnny Adams, claim number SCJ 01-17	\$11,916
(j) Shane Mathus, claim number SCJ 02-08	\$13,043
(k) Timothy Farnam, claim number SCJ 02-09	\$21,822
(l) Rebecca Williams, claim number SCJ 02-10	\$2,241
(m) Stewart Bailey, claim number SCJ 02-11	\$4,186
(n) Aaron Knaack, claim number SCJ 02-13	\$4,330
(o) Jacob Clark, claim number SCJ 02-14	\$11,613
<u>(p) Victor Stanculescu, claim number SCJ 03-01</u>	<u>\$6,696</u>
<u>(q) Darin Tidball, claim number SCJ 03-02</u>	<u>\$4,125</u>
<u>(r) Keith Dusky, claim number SCJ 03-03</u>	<u>\$2,065</u>
<u>(s) Carmen Cornell, claim number SCJ 03-04</u>	<u>\$8,128</u>
<u>(t) Wesley Roggenkamp, claim number SCJ 03-05</u>	<u>\$3,918</u>
<u>(u) Philip Athanas, claim number SCJ 03-06</u>	<u>\$5,810</u>
<u>(v) Thomas Tollifson, claim number SCJ 03-07</u>	<u>\$2,500</u>

(2) Payment from the state wildlife account for damage to crops by wildlife, pursuant to RCW 77.36.050:

(a) Ronald Palmer, claim number SCG 02-01	\$1,522
(b) Keith Morris, claim number SCG 02-02	\$1,315
(c) Edgar Roush, claim number SCG 02-03	\$1,459
<u>(d) Keith Nelson, claim number SCG 03-01</u>	<u>\$2,765</u>
<u>(e) Alton Haymaker, claim number SCG 03-02</u>	<u>\$40</u>
<u>(f) Circle S Landscape Supplies, SCG 03-04</u>	<u>\$12,944</u>

(3) Payment from the state general fund for death benefit claims to the estate of an employee of any state agency or higher education institution not otherwise provided a death benefit through coverage under their enrolled retirement system, pursuant to section 715, chapter 7, Laws of 2001:

<u>(a) Ok Chin Erdman, claim number SCO 03-08</u>	<u>\$150,000</u>
<u>(b) Baardson Estate, claim number SCO 03-10</u>	<u>\$150,000</u>
<u>(c) Lori Coss, claim number SCO 03-22</u>	<u>\$150,000</u>

(4) Payment from the general fund pursuant to RCW 27.44.040(1), Jan Deeds, claim number SCO 03-12 \$6,580.75

Sec. 710. 2002 c 371 s 727 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT—EMERGENCY FUND

General Fund—State Appropriation (FY 2002)	\$850,000
General Fund—State Appropriation (FY 2003)	(\$8,010,000)
	<u>\$9,010,000</u>
TOTAL APPROPRIATION	(\$8,860,000)
	<u>\$9,860,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The appropriations in this section are for the governor's emergency fund for the critically necessary work of any agency.

(2) Up to \$5,298,000 of the fiscal year 2003 appropriation is provided for costs associated with implementing House Bill No. 2926 (transferring the state library to the office of secretary of state.)

(3) \$1,000,000 of the general fund--state appropriation for fiscal year 2003 is provided solely for assistance to state agencies that are unable to effectively absorb the FTE reductions reflected in this 2003 supplemental appropriations act. Allocations to state agencies from this appropriation shall be reported to the legislative fiscal committees by the office of financial management within five days of the allocation.

**PART VIII
OTHER TRANSFERS AND APPROPRIATIONS**

Sec. 801. 2002 c 371 s 802 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—TRANSFERS

For transfers in this section to the state general fund, pursuant to RCW 43.135.035(5), the state expenditure limit shall be increased by the amount of the transfer. The increase shall occur in the fiscal year in which the transfer occurs.

Public Facilities Construction Loan and Grant Revolving Account: For transfer to the digital government revolving account on or before December 31, 2001	\$1,418,456
Financial Services Regulation Fund: To be transferred from the financial services regulation fund to the digital government revolving account during the period between July 1, 2001, and December 31, 2001	\$2,000,000
Local Toxics Control Account: For transfer to the state toxics control account. Transferred funds will be utilized for methamphetamine lab cleanup, to address areawide soil contamination problems, and clean up contaminated sites as part of the clean sites initiative	\$6,000,000

State Toxics Control Account: For transfer to the water quality account for water quality related projects funded in the capital budget.	\$9,000,000
General Fund: For transfer to the flood control assistance account	\$4,000,000
Water Quality Account: For transfer to the water pollution control account. Transfers shall be made at intervals coinciding with deposits of federal capitalization grant money into the account. The amounts transferred shall not exceed the match required for each federal deposit	\$12,564,487
Health Services Account: For transfer to the water quality account.	\$6,447,500
State Treasurer's Service Account: For transfer to the general fund on or before June 30, 2003, an amount in excess of the cash requirements of the state treasurer's service account. Pursuant to RCW 43.135.035(5), the state expenditure limit shall be increased by \$4,000,000 in fiscal year 2002 and by (\$8,393,000) <u>\$17,393,000</u> in fiscal year 2003 to reflect this transfer	((\$12,393,000)) <u>\$21,393,000</u>
Public Works Assistance Account: For transfer to the drinking water assistance account	\$7,700,000
Tobacco Settlement Account: For transfer to the health services account, in an amount not to exceed the actual balance of the tobacco settlement account	\$256,700,000
General Fund: For transfer to the water quality account.	\$60,821,172
Health Services Account: For transfer to the state general fund by June 30, 2002. Pursuant to RCW 43.135.035(5), the state expenditure limit shall be increased in fiscal year 2002 to reflect this transfer	\$150,000,000
Multimodal Transportation Account: For transfer to the state general fund by June 30, 2002. Pursuant to RCW 43.135.035(5), the state expenditure limit shall be increased in fiscal year 2002 to reflect this transfer	\$70,000,000
Health Service Account: For transfer to the violence reduction and drug	

enforcement account	\$6,497,500
Gambling Revolving Account: For transfer	
to the state general fund,	\$2,000,000
for fiscal year 2002 and \$450,000 for	
fiscal year 2003	\$2,450,000
((Horticultural Districts Account: For transfer	
to the fruit and vegetable inspection	
account	\$11,075,000
Agricultural Local Account: For	
transfer to the fruit and vegetable	
inspection account	\$605,000))
Nisqually Earthquake Account: For transfer to	
the disaster response account for fire	
suppression and mobilization costs	\$32,802,000
Enhanced 911 Account: For transfer to	
the state general fund for fiscal	
year 2003	\$6,000,000
Clarke-McNary Fund: For transfer to the	
state general fund for fiscal year 2002	\$4,000,000
State Drought Preparedness Account: For	
transfer to the state general fund for	
fiscal year 2002	\$3,000,000
Financial Services Regulation Fund: For	
transfer to the state general fund,	
\$2,250,000 for fiscal year 2002 and	
\$357,000 for fiscal year 2003	\$2,607,000
Industrial Insurance Premium Refund Account:	
For transfer to the state general fund	
for fiscal year 2002	\$1,000,000
Liquor Control Board Construction and	
Maintenance Account: For transfer	
to the state general fund for fiscal	
year 2003	\$504,000
Liquor Revolving Account: For transfer	
to the state general fund for fiscal	
year 2003	\$2,059,000
Lottery Administrative Account: For transfer	
to the state general fund for fiscal	
year 2003	\$335,000
Emergency Medical Services and Trauma Care	
System Trust Account: For transfer	
to the state general fund for fiscal	
year 2002	\$6,000,000
Public Service Revolving Account: For transfer	
to the state general fund for fiscal	
year 2003	\$406,000
Local Leasehold Excise Tax Account: For transfer	
of interest to the state general fund by	
June 1, 2002, for fiscal year 2002	\$1,000,000

Insurance Commissioner's Regulatory Account: For transfer to the state general fund for fiscal year 2003	\$366,000
Health Services Account: For transfer to the tobacco prevention and control account	(((\$21,980,000))
.....	<u>\$18,920,000</u>
From the Emergency Reserve Fund: For transfer to the state general fund: On June 28, 2002.....	\$300,000,000
On June 28, 2003.....	\$25,000,000
Tobacco Securitization Trust Account: For transfer to the state general fund for fiscal year 2003	\$450,000,000

**PART IX
CAPITAL EXPENDITURES**

Sec. 901. 2002 c 238 s 202 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND
ECONOMIC DEVELOPMENT**

Local/Community Projects (2002-S-005): Job Creation and Infrastructure
Projects

The following projects are eligible for funding:

Projects	Amount
Asia Pacific center	\$50,000
Benton county jail	\$2,000,000
Bremerton maritime park	\$500,000
Edmonds waterfront park	\$300,000
Grace Cole memorial park/Brookside creek.....	\$400,000
Kent station infrastructure improvements.....	\$900,000
Mill creek active use ball fields	\$1,000,000
Nathan Chapman trail	\$300,000
Penny creek/9th Avenue crossing	\$400,000
Port Angeles skills center/skills consortium	\$3,000,000
Puget Sound environmental learning center	\$2,000,000
Ridgefield wastewater treatment.....	\$585,000
Sammamish surface water treatment	\$1,500,000
Shoreline historical museum.....	\$28,000
Snohomish county children's museum	\$300,000
Soundview park/playground.....	\$200,000
Stewart heights pool project	\$500,000
Sundome seating expansion -Yakima	\$1,250,000
West central community center childcare project.....	\$500,000
William H. Factory small business incubator.....	\$250,000

((Yakima ballfields)) For the transfer of property,
commonly known as Larson park field No. 4 and
Dunbar field, of the city of Yakima to the

<u>Yakima Valley Community College and for the creation of new ball fields by and for the city of Yakima</u>	\$1,250,000
TOTAL	\$17,213,000

Appropriation:

State Building Construction Account—State	\$17,213,000
Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs).....	\$0
TOTAL	\$17,213,000

Sec. 902. 2001 2nd sp.s. c 8 s 158 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF GENERAL ADMINISTRATION

Legislative Buildings - O'Brien and Newhouse Building Improvements (01-H-021)

Appropriation:

((Capitol Building Construction Account—State	\$1,000,000))
Thurston County Capital Facilities Account—State	(\$1,000,000))
	<u>\$2,000,000</u>

~~((Subtotal Appropriation~~

Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs).....	\$0
TOTAL	\$2,000,000

Sec. 903. 2001 2nd sp.s. c 8 s 172 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF GENERAL ADMINISTRATION

Tumwater Office Building 1 (01-S-003)

The appropriation in this section is subject to the following conditions and limitations:

(1) Planning funds are provided to lease/develop a state office building of 150,000 to 200,000 square feet on state-owned property in Tumwater according to the terms of the agreement with the Port of Olympia when the property was acquired or within the preferred development/leasing areas in Thurston county. The building shall be constructed and financed so that agency occupancy costs will not exceed comparable private market rental rates. The comparable general office space rate shall be calculated based on the three latest Thurston county leases of new space of at least 100,000 rentable square feet adjusted for inflation as determined by the department of general administration. The department of general administration shall coordinate with potential state agency tenants whose current lease expire near the time of occupancy so that buyout of current leases do not add to state expense.

(2) The department shall finance this project using a financing contract as authorized in section 907(2)(c), chapter 8, Laws of 2001 2nd sp. sess., with title passing to the state if all payments are made as provided in the contract. Should

the department choose to use a financing contract that does not provide for the issuance of certificates of participation, the financing contract shall be subject to approval by the state finance committee as required by RCW 39.94.010. In approving a financing contract not providing for the use of certificates of participation, the state finance committee should be reasonably certain that the contract is excluded from the computation of indebtedness, particularly that the contract is not backed by the full faith and credit of the state and the legislature is expressly not obligated to appropriate funds to make payments. For purposes of this section, "financing contract" includes but is not limited to a certificate of participation and tax exempt financing similar to that authorized in RCW 47.79.140.

Appropriation:

State Building Construction Account--State	\$200,000
Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs)	\$0
TOTAL	\$200,000

Sec. 904. 2002 c 238 s 109 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF GENERAL ADMINISTRATION

Legislative Building: Rehabilitation (01-1-008)

The appropriations in this section are subject to the following conditions and limitations:

(1) The appropriations in this section are subject to the conditions and limitations of sections 902 and 903 of this act.

(2) The department of general administration, in consultation with the legislature, the governor, and the state capitol committee, shall immediately begin planning and initiate an accelerated design/construction schedule for the renovation of the state legislative building as follows:

(a) No new permanent buildings shall be constructed, and the department shall follow standards for historic preservation;

(b) The goal shall be to reoccupy the building in time for the 2005 legislative session;

(c) The department shall make temporary accommodations for the displacement of legislators and legislative staff in the John L. O'Brien building, the Pritchard building, the Cherberg building, and the Newhouse building, and may use modular space. Decisions on the use of space for the Pritchard building will be made by legislative leadership by July 1, 2001, to make it available for use by the legislature by April 1, 2002;

(d) The department shall temporarily move the state library from the Pritchard building by October 1, 2001, and, if needed, the department shall lease storage facilities in Thurston county for books and other library assets;

(e) The department shall make temporary accommodations for other tenants of the state legislative building as follows:

(i) The office of the insurance commissioner shall be temporarily moved to leased space in Thurston county;

(ii) The office of the governor shall be moved to the Insurance building;

(iii) The primary office of the code reviser and the lieutenant governor shall be moved to a location on the west capitol campus; and

(iv) The other tenants, including the office of the state treasurer, the office of the state auditor, and the office of the secretary of state shall be moved to leased space in Thurston county;

(f) The state legislative building shall be completely vacated by the office of the governor, the office of the secretary of state, the office of treasurer, and the office of the state auditor by November 1, 2001, and by the legislature fourteen days after the end of the 2002 legislative session to make it available for renovation by the contractor; and

(g) State contracts for the legislative building renovation, Nisqually earthquake repair, and future earthquake mitigation shall conform to all rules, regulations, and requirements of the federal emergency management agency.

(3) The state capitol committee, in conjunction with a legislative building renovation oversight committee consisting of two members from both the house of representatives and senate, each appointed by legislative leadership, shall periodically advise the department regarding the rehabilitation, the receipt and use of private funds, and other issues that may arise.

(4) The department shall report on the progress of accelerated planning, design, and relocations related to the renovation of the state legislative building to the legislature and the governor by July 15, 2001, and November 15, 2001, and shall consult with the legislature and governor on major decisions including placement of the cafeteria and exiting stairs in the legislative building by August 31, 2001.

(5) In the event of any conflicts between the conditions and limitations in this section and section 3, chapter 123, Laws of 2001, the conditions and limitations of this section shall apply.

(6) ~~(((\$154,000 of the capitol historic district construction account appropriation is provided solely for the department of general administration to contract for fund raising services for the solicitation of charitable gifts, grants, or donations specifically for the purpose of preservation and restoration of the state legislative building and related educational exhibits and programs. By June 30, 2004, the amount provided by this subsection shall be reinvested to the capitol historic district construction account from the proceeds of the gifts, grants, and donations.))~~ The state building construction account appropriation is for estimated cost increases due to the unforeseen construction obstacles and code requirements discovered in design and early construction activities.

Reappropriation:

Capitol Building Construction Account--State	\$2,000,000
Thurston County Capital Facilities	
Account--State	\$2,500,000
Subtotal Reappropriation	\$4,500,000

Appropriation:

Capitol Historic District Construction	
Account--State	\$81,681,000
Thurston County Capital Facilities	
Account--State	\$1,300,000
<u>State Building Construction Account--State</u>	<u>\$6,000,000</u>
Subtotal Appropriation	<u>(\$82,981,000)</u>
	<u>\$88,981,000</u>

Prior Biennia (Expenditures)	\$1,000,000
Future Biennia (Projected Costs).	\$2,300,000
TOTAL	<u>(\$96,781,000)</u>
	<u>\$96,781,000</u>

Sec. 905. 2002 c 238 s 223 (uncodified) is amended to read as follows:

FOR WESTERN WASHINGTON UNIVERSITY
 Job Creation and Infrastructure Projects (03-1-001)

The appropriations in this section ((is)) are subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Project	Amount
Miller hall	\$1,650,000
Steam plant	\$1,000,000
Air quality	\$743,000
Utilities	\$501,000
Viking substation	\$103,000
Storm water detention	\$75,000
Old main restoration	\$582,000
Fire safety	\$435,000
<u>Parks hall fire damage</u>	<u>\$1,500,000</u>

(2) The university shall implement the eligible projects pursuant to sections 225 through 227 of this act and shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

Education Construction Account--State	\$3,000,000
<u>State Building Construction Account--State</u>	<u>\$1,500,000</u>
<u>Subtotal Appropriation</u>	<u>\$4,500,000</u>
Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs).	\$0
TOTAL	<u>(\$3,000,000)</u>
	<u>\$4,500,000</u>

Sec. 906. 2001 2nd sp.s. c 8 s 658 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY
 WSU Pullman - Energy Plant - Heat: Renovation (02-1-501)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation in this section is subject to the conditions and limitations of sections 902 and 903 of this act.

(2)(a) Any agreement or contract for the modernization or replacement of the existing steam generation plant currently located on the Pullman campus must comply with chapter 39.35C RCW. Prior to entering into an agreement or contract obligating itself on this project, the university shall have the project reviewed by the appropriate staff of the energy division of the department of

community, trade, and economic development and the department of general administration, and shall consider any comments and suggestions made by these departments. If the project involves a private energy development firm, the following issues shall be considered in the development and implementation of the project:

- (i) Regional and local utility needs for power;
- (ii) Cost and certainty of fuel supplies;
- (iii) Value of electricity produced and options for sale of surplus electricity;
- (iv) The capability of the university to own and operate the facility should the private party terminate its involvement;
- (v) Costs associated with interconnection with the local electric utility's transmission system;
- (vi) Capability of the local electric utility to wheel electricity generated by the facility and the costs associated with wheeling;
- (vii) Potential financial risks to the state or the university and measures to mitigate any risks; and
- (viii) Benefits to the state and the university from the project including design configuration, ownership arrangement, operations, and financial arrangements for the project based on the selection of project participants.

(b) The university shall report to the office of financial management and the energy and fiscal committees of the legislature on the development and implementation of this project, including consideration of the issues and the agency suggestions under subsection (2)(a) of this section, in December of 2001 and 2002.

Appropriation:

State Building Construction Account--State	(((\$23,000,000))
	<u>\$24,539,000</u>
Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs)	\$0
TOTAL	(((\$23,000,000))
	<u>\$24,539,000</u>

Sec. 907. 2001 2nd sp.s. c 8 s 668 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY

WSU Pullman - Teaching and Learning Center: New Facility (98-2-062)

The reappropriation in this section is subject to the conditions and limitations of section 906 of this act.

Reappropriation:

State Building Construction Account--State	(((\$8,000,000))
	<u>\$6,461,000</u>
Prior Biennia (Expenditures)	\$22,870,175
Future Biennia (Projected Costs)	\$0
TOTAL	(((\$30,870,175))
	<u>\$29,331,175</u>

Sec. 908. 2001 2nd sp.s. c 8 s 352 (uncodified) is amended to read as follows:

FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION

National Recreation Trails (NRTP) (02-4-006)

Appropriation:

Recreation Resources Account--Federal	(((\$2,132,936)))
	<u>\$2,332,936</u>
Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs)	\$977,000
TOTAL	(((\$3,109,936)))
	<u>\$3,309,936</u>

NEW SECTION. Sec. 909. INLAND NORTHWEST REGIONAL SPORTS PROJECT.

2002 c 238 s 204 (uncodified) is repealed.

**PART X
MISCELLANEOUS**

NEW SECTION. **Sec. 1001.** 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. 1002.** 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.

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Passed by the Senate April 2, 2003.

Passed by the House March 31, 2003.

Approved by the Governor April 9, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 9, 2003.

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

"I am returning herewith, without my approval as to sections 202, lines 31 and 32; 305, lines 14 and 15; 706; and 707 of Substitute Senate Bill No. 5403 entitled:

"AN ACT Relating to fiscal matters;"

My reasons for vetoing these sections are as follows:

Section 202, Lines 31-32, Page 31, Appropriation Reduction for the Children and Family Services Program (Department of Social and Health Services)

This appropriation item would have reduced the appropriation to the Department of Social and Health Services' (DSHS) Children and Family Services Program by \$3,804,000. DSHS has already adopted numerous measures to contain costs and achieve the savings assumed for this fiscal year. Equipment purchases and out-of-state travel have long ago been frozen and hiring has been delayed. However, a number of unanticipated, unavoidable costs will need to be covered between now and June 30, 2003, the conclusion of the fiscal year. Possible federal funding changes and additional expenses related to pending litigation are examples of these costs. Meanwhile, current budget estimates for the department indicate no ending fund balance with which to assure the agency can meet its obligations through the end of the biennium. I am directing the department to continue to aggressively cut costs wherever it can. This item veto provides the department a small amount of necessary budget flexibility so that they can properly close out the fiscal year.

Section 305, Lines 14-15, Page 105, Appropriation Reduction for the State Toxics Control Account (Department of Agriculture)

This appropriation item would have reduced the State Toxics Control Account appropriation to the Department of Agriculture by \$433,000. However, this reduction is not similarly reflected in the proviso. Thus, there is a technical error. In order to correct it, I am vetoing the entire reduction. However, I am instructing the director of the Department of Agriculture to place \$433,000 of the agency's provisioned State Toxics Control Account authority in reserve.

Section 706, Page 165, Allotment Reduction for Travel, Equipment, and Personal Service Contracts

This section would have directed the Office of Financial Management to reduce agency allotments for travel, equipment and personal service contracts by \$10 million dollars. Without this veto, the Office of the Superintendent of Public Instruction's committed contracts to conduct the Washington Assessment of Student Learning and Iowa Test of Basic Skills assessments in the state's K-12 schools this year are jeopardized. This section also jeopardizes the contracts the Attorney General employs with expert witnesses to defend the state's interests in major lawsuits; the Department of Social and Health Services' ability to travel allowing Child Protective Service workers to safeguard vulnerable children on a daily basis; the Department of Corrections' essential ability to transport dangerous prisoners; and the Department of Transportation's construction contracts in place with the private sector.

State agencies need to do everything in their power to control discretionary expenditures in these difficult financial times. However, essential travel, equipment and personal services contracts are often critical in delivering direct services to Washington citizens, and cannot be stopped without affecting those services.

The \$10 million cut in this provision would have been added to employee-related savings and program reductions already implemented in most agencies. Many agencies simply cannot absorb the cumulative effect of these multiple reductions in the three months remaining in the 2001-03 Biennium.

I agree with the general intent of this provision, therefore I am directing agencies to continue to closely monitor and control discretionary expenditures in preparation for the significant program cuts that will need to be part of the new budget that begins on July 1.

Section 707, Pages 165-166, State Employment Restrictions

This section would have prohibited executive branch agencies from establishing new staff positions and would have restricted agencies' ability to fill vacancies. In the recently passed budget proposal for 2003-05, the Senate has already recognized that this restriction is far too limiting. However, there are no assurances that a budget for the next biennium will pass the Legislature in time to cure this problem, so I am vetoing this section.

Directive No. 02-04, which I issued in December of 2002, set in motion the key provisions of this section of the supplemental budget by directing executive agencies to limit hiring and meet specific employee reduction targets. If this section were implemented, natural resource agencies like State Parks, the Department of Ecology, the Department of Agriculture and the Department of Natural Resources would have been unable to hire the essential spring and summer temporary employees to manage and safeguard our parks, campgrounds and recreational areas. The Consumer Advocacy program in the Insurance Commissioner's Office would have been unduly limited by this provision.

Agency budgets and employment levels have already been reduced in separate actions in this supplemental budget bill. In keeping with the intent of this section, agencies will continue to limit hiring to meet the employment reduction targets pursuant to my directive.

For these reasons, I have vetoed sections 202, lines 31 and 32; 305, lines 14 and 15; 706; and 707 of Substitute Senate Bill No. 5403.

With the exception of sections 202, lines 31 and 32; 305, lines 14 and 15; 706; and 707, Substitute Senate Bill No. 5403 is approved."

CHAPTER 11

[House Bill 1052]

VOLUNTEER EMERGENCY SERVICES

AN ACT Relating to protecting persons who provide volunteer emergency services; and adding a new section to chapter 4.24 RCW.

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

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

Any person, including but not limited to contractors, builders, tradespeople, and other providers of construction, remodel, or repair services, who, without compensation or the expectation of compensation, renders emergency repairs to any structure at the scene of any accident, disaster, or emergency that has caused or resulted in damage to the structure is not liable for civil damages resulting from any act or omission in the rendering of such emergency repairs, other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person rendering emergency repairs during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such repairs is excluded from the protection of this section.

For the purposes of this section, "accident, disaster, or emergency" includes an earthquake, windstorm, hurricane, landslide, flood, volcanic eruption, explosion, fire, or any similar occurrence.

Passed by the House March 6, 2003.

Passed by the Senate April 2, 2003.

Approved by the Governor April 10, 2003.

Filed in Office of Secretary of State April 10, 2003.

CHAPTER 12

[Substitute House Bill 1069]

PROPERTY TAX—INTEREST AND PENALTIES

AN ACT Relating to authorizing a waiver of interest and penalties for property tax bills not sent to the taxpayer due to error by the county; and amending RCW 84.56.025.

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

Sec. 1. RCW 84.56.025 and 1998 c 327 s 1 are each amended to read as follows:

(1) The interest and penalties for delinquencies on property taxes ~~((, which taxes are levied on real estate in the year of a conveyance of the real estate and which are collected in the following year,))~~ shall be waived by the county treasurer ~~((under the following circumstances:~~

~~(a) Records conveying the real estate were filed with the county auditor on or before November 30 of the year the taxes are levied;~~

~~(b) A grantee's name and address are included in the records; and~~

~~(e))~~ if the notice for these taxes due, as provided in RCW 84.56.050, was not sent to a ~~((grantee))~~ taxpayer due to error by the county. Where ~~((such))~~ waiver of interest and penalties has occurred, the full amount of interest and penalties shall be reinstated if the ~~((grantee))~~ taxpayer fails to pay the delinquent taxes within thirty days of receiving notice that the taxes are due. Each county treasurer shall, subject to guidelines prepared by the department of revenue, establish administrative procedures to determine if ~~((grantees))~~ taxpayers are eligible for this waiver.

(2) In addition to the waiver under subsection (1) of this section, the interest and penalties for delinquencies on property taxes shall be waived by the county treasurer under the following circumstances:

(a) The taxpayer fails to make one payment under RCW 84.56.020 by the due date on the taxpayer's personal residence because of hardship caused by the

death of the taxpayer’s spouse if the taxpayer notifies the county treasurer of the hardship within sixty days of the tax due date; or

(b) The taxpayer fails to make one payment under RCW 84.56.020 by the due date on the taxpayer’s parent’s or stepparent’s personal residence because of hardship caused by the death of the taxpayer’s parent or stepparent if the taxpayer notifies the county treasurer of the hardship within sixty days of the tax due date.

(3) Before allowing a hardship waiver under subsection (2) of this section, the county treasurer may require a copy of the death certificate along with an affidavit signed by the taxpayer.

Passed by the House February 21, 2003.

Passed by the Senate April 2, 2003.

Approved by the Governor April 10, 2003.

Filed in Office of Secretary of State April 10, 2003.

CHAPTER 13

[House Bill 1101]

AGRICULTURAL COMMODITIES—EMERGENCY STORAGE

AN ACT Relating to forwarding grain when an emergency storage situation exists; and amending RCW 22.09.660.

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

Sec. 1. RCW 22.09.660 and 1983 c 305 s 64 are each amended to read as follows:

Upon determining that an emergency storage situation appears to exist, the director may authorize the warehouseman to forward grain that is covered by negotiable receipts to other licensed warehouses for storage without canceling and reissuing the negotiable receipts ((for not more than thirty days)) pursuant to conditions established by rule.

Passed by the House February 10, 2003.

Passed by the Senate April 7, 2003.

Approved by the Governor April 14, 2003.

Filed in Office of Secretary of State April 14, 2003.

CHAPTER 14

[House Bill 1435]

FRUIT AND VEGETABLE DISTRICT FUND

AN ACT Relating to the fruit and vegetable district fund; amending RCW 15.17.243; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 15.17.243 and 2002 c 322 s 4 are each amended to read as follows:

The district manager for district two as defined in WAC 16-458-075 is authorized to transfer two hundred thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of

Rhagoletis pomonella in district two. The transfer of funds shall occur by June 1, 1997. On June 30, ~~((2003))~~ 2005, any unexpended portion of the two hundred thousand dollars shall be transferred to the fruit and vegetable inspection account and deposited in the district account for the district that includes Yakima county.

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 June 30, 2003.

Passed by the House February 24, 2003.

Passed by the Senate April 7, 2003.

Approved by the Governor April 14, 2003.

Filed in Office of Secretary of State April 14, 2003.

CHAPTER 15

[House Bill 1117]

WEB SITE ADDRESS—DEPARTMENT OF AGRICULTURE

AN ACT Relating to moving a web site address from statute to rule; amending RCW 15.54.340; and providing an effective date.

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

Sec. 1. RCW 15.54.340 and 1999 c 381 s 1 are each amended to read as follows:

(1) Any commercial fertilizer distributed in this state shall have placed on or affixed to the package a label setting forth in clearly legible and conspicuous form the following information:

- (a) The net weight;
- (b) The product name, brand, and grade. The grade is not required if no primary nutrients are claimed;
- (c) The guaranteed analysis;
- (d) The name and address of the registrant or licensee. The name and address of the manufacturer, if different from the registrant or licensee, may also be stated;

(e) Any information required under WAC 296-62-054;

(f) ~~((At a minimum, one of the following labeling statements:~~

~~(i) "Information received by the Washington State Department of Agriculture regarding the components in this product is available on the internet at <http://www.wa.gov/agr/>"; or~~

~~(ii) "Information regarding the contents and levels of metals in this product is available on the internet at <http://www.wa.gov/agr/>"; or~~

~~(iii) "Information regarding the contents and levels of metals in this product is available on the internet at <http://www.regulatory-info-xx.com>". Each registrant must substitute a unique alpha numeric identifier for "xx". This statement may be used only if the registrant establishes and maintains the internet site and the internet site meets the following criteria:~~

- ~~(A) There is no advertising or company specific information on the site;~~
- ~~(B) There is a clearly visible, direct hyperlink to the department's internet site specified in (f)(i) and (ii) of this subsection (1); and~~

~~(C) Any other criteria adopted by the director by rule)) A statement, established by rule, referring persons to the department's Uniform Resource~~

Locator (URL) internet address where data regarding the metals content of the product is located; and

(g) Other information as required by the department by rule.

(2) If a commercial fertilizer is distributed in bulk, a written or printed statement of the information required by subsection (1) of this section shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant or licensee for a period of twelve months and shall be available to the department upon request: PROVIDED, That each such delivery shall be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant or licensee, or manufacturer, or both; and the name and address of the purchaser.

NEW SECTION. Sec. 2. Section 1 of this act takes effect January 1, 2004.

Passed by the House February 10, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 16

[Substitute House Bill 1195]

ROCK CLIMBING

AN ACT Relating to rock climbing; amending RCW 4.24.210; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities, such as rock climbing. Although RCW 4.24.210 provides property owners with immunity from legal claims for any unintentional injuries suffered by certain individuals recreating on their land, the legislature finds that it is important to the promotion of rock climbing opportunities to specifically include rock climbing as one of the recreational activities that are included in RCW 4.24.210. By including rock climbing in RCW 4.24.210, the legislature intends merely to provide assurance to the owners of property suitable for this type of recreation, and does not intend to limit the application of RCW 4.24.210 to other types of recreation. By providing that a landowner shall not be liable for any unintentional injuries resulting from the condition or use of a fixed anchor used in rock climbing, the legislature recognizes that such fixed anchors are recreational equipment used by climbers for which a landowner has no duty of care.

Sec. 2. RCW 4.24.210 and 1997 c 26 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4) Nothing in this section shall prevent the liability of ~~((such))~~ a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

~~((4))~~ (5) For purposes of this section, a license or permit issued for statewide use under authority of chapter ~~((43.51))~~ 79A.05 RCW ~~((Title 75,))~~ or Title 77 RCW is not a fee.

Passed by the House March 6, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 17

[Engrossed Substitute House Bill 1242]

BIODIESEL

AN ACT Relating to the use of biodiesel; and adding new sections to chapter 43.19 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.19 RCW to read as follows:

The legislature recognizes that:

- (1) Biodiesel is less polluting than petroleum diesel;
- (2) Using biodiesel in neat form or blended with petroleum diesel significantly reduces air toxics and cancer-causing compounds as well as the soot associated with petroleum diesel exhaust;
- (3) Biodiesel degrades much faster than petroleum diesel;
- (4) Biodiesel is less toxic than petroleum fuels;
- (5) The United States environmental protection agency's new emission standards for petroleum diesel that take effect June 1, 2006, will require the addition of a lubricant to ultra-low sulfur diesel to counteract premature wear of injection pumps;
- (6) Biodiesel provides the needed lubricity to ultra-low sulfur diesel;
- (7) Biodiesel use in state-owned diesel-powered vehicles provides a means for the state to comply with the alternative fuel vehicle purchase requirements of the energy policy act of 1992, P.L. 102-486; and
- (8) The state is in a position to set an example of large scale use of biodiesel in diesel-powered vehicles and equipment.

NEW SECTION. Sec. 2. A new section is added to chapter 43.19 RCW to read as follows:

(1) All state agencies are encouraged to use a fuel blend of twenty percent biodiesel and eighty percent petroleum diesel for use in diesel-powered vehicles and equipment.

(2) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

NEW SECTION. Sec. 3. A new section is added to chapter 43.19 RCW to read as follows:

The definitions in this section apply throughout sections 1 and 2 of this act unless the context clearly requires otherwise.

(1) "Biodiesel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(2) "Ultra-low sulfur diesel" means petroleum diesel in which the sulfur content is not more than thirty parts per million.

Passed by the House March 11, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 18

[Substitute House Bill 1271]

INTEROPERABILITY EXECUTIVE COMMITTEE

AN ACT Relating to enhancing interoperability of the state's emergency communication systems; amending RCW 43.105.041; reenacting and amending RCW 43.105.020; adding new sections to chapter 43.105 RCW; creating a new section; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to ensure that the state's considerable investment in radio communications facilities, and the radio spectrum that is licensed to government entities in the state, are managed in a way that promotes to the maximum extent the health and safety of the state's citizens and the economic efficiencies of coordinated planning, development, management, maintenance, accountability, and performance. The legislature finds that such coordination is essential for disaster preparedness, emergency management, and public safety, and that such coordination will result in more cost-effective use of state resources and improved government services.

Sec. 2. RCW 43.105.020 and 1999 c 285 s 1 and 1999 c 80 s 1 are each reenacted and amended to read as follows:

As used in this chapter, unless the context indicates otherwise, the following definitions shall apply:

- (1) "Department" means the department of information services;
- (2) "Board" means the information services board;
- (3) "Committee" means the state interoperability executive committee;
- (4) "Local governments" includes all municipal and quasi municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately;
- ~~((4))~~ (5) "Director" means the director of the department;
- ~~((5))~~ (6) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. This term includes, but is not limited to, services acquired for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, telecommunications installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing;
- ~~((6))~~ (7) "Backbone network" means the shared high-density portions of the state's telecommunications transmission facilities. It includes specially conditioned high-speed communications carrier lines, multiplexors, switches associated with such communications lines, and any equipment and software components necessary for management and control of the backbone network;
- ~~((7))~~ (8) "Telecommunications" means the transmission of information by wire, radio, optical cable, electromagnetic, or other means;
- ~~((8))~~ (9) "Information" includes, but is not limited to, data, text, voice, and video;
- (10) "Information processing" means the electronic capture, collection, storage, manipulation, transmission, retrieval, and presentation of information in the form of data, text, voice, or image and includes telecommunications and office automation functions;

~~((9))~~ (11) "Information services" means data processing, telecommunications, ~~((and))~~ office automation, and computerized information systems;

~~((10))~~ (12) "Equipment" means the machines, devices, and transmission facilities used in information processing, such as computers, word processors, terminals, telephones, ~~((and))~~ wireless communications system facilities, cables, and any physical facility necessary for the operation of such equipment;

~~((11))~~ (13) "Information technology portfolio" or "portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments;

~~((12))~~ (14) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources and telecommunications;

~~((13))~~ (15) "Proprietary software" means that software offered for sale or license;

~~((14))~~ (16) "Video telecommunications" means the electronic interconnection of two or more sites for the purpose of transmitting and/or receiving visual and associated audio information. Video telecommunications shall not include existing public television broadcast stations as currently designated by the department of community, trade, and economic development under chapter 43.330 RCW;

~~((15))~~ (17) "K-20 educational network board" or "K-20 board" means the K-20 educational network board created in RCW 43.105.800;

~~((16))~~ (18) "K-20 network technical steering committee" or "committee" means the K-20 network technical steering committee created in RCW 43.105.810;

~~((17))~~ (19) "K-20 network" means the network established in RCW 43.105.820;

~~((18))~~ (20) "Educational sectors" means those institutions of higher education, school districts, and educational service districts that use the network for distance education, data transmission, and other uses permitted by the K-20 board.

Sec. 3. RCW 43.105.041 and 1999 c 285 s 5 are each amended to read as follows:

(1) The board shall have the following powers and duties related to information services:

(a) To develop standards and procedures governing the acquisition and disposition of equipment, proprietary software and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data;

(b) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW

43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200. This subsection (1)(b) does not apply to the legislative branch;

(c) To develop statewide or interagency technical policies, standards, and procedures;

(d) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services, and to assure the cost-effective development and incremental implementation of a statewide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(e) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

(f) To develop and implement a process for the resolution of appeals by:

(i) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(ii) A customer agency concerning the provision of services by the department or by other state agency providers;

(g) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(i) Planning, management, control, and use of information services;

(ii) Training and education; and

(iii) Project management;

(h) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director; and

(i) To review and approve that portion of the department's budget requests that provides for support to the board.

(2) Statewide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The board shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems, including wireless communications systems. Local governments are strongly encouraged to follow the standards established by the board; and

(b) Require agencies to consider electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the board is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

(3)(a) The board, in consultation with the K-20 board, has the duty to govern, operate, and oversee the technical design, implementation, and operation of the K-20 network including, but not limited to, the following duties: Establishment and implementation of K-20 network technical policy, including technical standards and conditions of use; review and approval of network design; procurement of shared network services and equipment; and resolving

user/provider disputes concerning technical matters. The board shall delegate general operational and technical oversight to the K-20 network technical steering committee as appropriate.

(b) The board has the authority to adopt rules under chapter 34.05 RCW to implement the provisions regarding the technical operations and conditions of use of the K-20 network.

NEW SECTION. Sec. 4. A new section is added to chapter 43.105 RCW to read as follows:

(1) The board shall appoint a state interoperability executive committee, the membership of which must include, but not be limited to, representatives of the military department, the Washington state patrol, the department of transportation, the department of information services, the department of natural resources, city and county governments, state and local fire chiefs, police chiefs, and sheriffs, and state and local emergency management directors. The chair and legislative members of the board will serve as nonvoting ex officio members of the committee. Voting membership may not exceed fifteen members.

(2) The chair of the board shall appoint the chair of the committee from among the voting members of the committee.

(3) The strategic interoperability executive committee has the following responsibilities:

(a) Develop policies and make recommendations to the board for technical standards for state wireless radio communications systems, including emergency communications systems. The standards must address, among other things, the interoperability of systems, taking into account both existing and future systems and technologies;

(b) Coordinate and manage on behalf of the board the licensing and use of state-designated and state-licensed radio frequencies, including the spectrum used for public safety and emergency communications, and serve as the point of contact with the Federal Communications Commission on matters relating to allocation, use, and licensing of radio spectrum;

(c) Seek support, including possible federal or other funding, for state-sponsored wireless communications systems;

(d) Develop recommendations for legislation that may be required to promote interoperability of state wireless communications systems;

(e) Foster cooperation and coordination among public safety and emergency response organizations;

(f) Work with wireless communications groups and associations to ensure interoperability among all public safety and emergency response wireless communications systems; and

(g) Perform such other duties as may be assigned by the board to promote interoperability of wireless communications systems.

NEW SECTION. Sec. 5. A new section is added to chapter 43.105 RCW to read as follows:

(1) The state interoperability executive committee shall take inventory of and evaluate all state and local government-owned public safety communications systems, and prepare a statewide public safety communications plan. The plan must set forth recommendations for executive and legislative action to insure that public safety communications systems can communicate

with one another and conform to federal law and regulations governing emergency communications systems and spectrum allocation. The plan must include specific goals for improving interoperability of public safety communications systems and identifiable benchmarks for achieving those goals.

(2) The committee shall present the inventory and plan required in subsection (1) of this section to the board and appropriate legislative committees as follows:

(a) By December 31, 2003, an inventory of state government-operated public safety communications systems;

(b) By July 31, 2004, an inventory of all public safety communications systems in the state;

(c) By March 31, 2004, an interim statewide public safety communications plan; and

(d) By December 31, 2004, a final statewide public safety communications plan.

(3) The committee shall consult regularly with the joint legislative audit and review committee and the legislative evaluation and accounting program committee while developing the inventory and plan under this section.

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 July 1, 2003.

Passed by the House March 14, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 19

[Engrossed Substitute House Bill 1277]

EDUCATIONAL ASSISTANCE GRANT PROGRAM

AN ACT Relating to gaining independence for students by establishing an educational assistance grant program for students with dependents; amending RCW 28B.10.801; reenacting and amending RCW 43.79A.040; adding a new section to chapter 74.04 RCW; and adding a new chapter to Title 28B RCW.

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

NEW SECTION. Sec. 1. FINDING—INTENT. The legislature finds that financially needy students, especially those with dependents, are finding it increasingly difficult to stay in school due to the high costs of caring for their dependent children.

The legislature intends to establish an educational assistance grant program, funded through gifts, grants, or endowments from private sources, for students with dependents who have additional financial needs due to the care they provide for their dependents eighteen years of age or younger.

NEW SECTION. Sec. 2. PROGRAM CREATED. The educational assistance grant program for students with dependents is hereby created, subject to the availability of receipts of gifts, grants, or endowments from private sources. The program is created to serve financially needy students with dependents eighteen years of age or younger, by assisting them directly through

a grant program to pursue a degree or certificate at public or private institutions of higher education, as defined in RCW 28B.10.802, that participate in the state need grant program.

NEW SECTION. Sec. 3. DEFINITION—ELIGIBILITY. To be eligible for the educational assistance grant program for students with dependents, applicants shall: (1) Be residents of the state of Washington; (2) be needy students as defined in RCW 28B.10.802(3); (3) be eligible to participate in the state need grant program as set forth under RCW 28B.10.810; and (4) have dependents eighteen years of age or younger who are under their care.

NEW SECTION. Sec. 4. ACCOUNT CREATION. (1) The students with dependents grant account is created in the custody of the state treasurer. All receipts from the program shall be deposited into the account. Only the higher education coordinating board, or its designee, may authorize expenditures from the account. Disbursements from the account are exempt from appropriations and the allotment procedures under chapter 43.88 RCW.

(2) The board may solicit and receive gifts, grants, or endowments from private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the educational assistance grant program. The executive director, or the executive director's designee, may spend gifts, grants, or endowments or income from the private sources according to their terms unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710.

(3) The earnings on the account shall be used solely for the purposes in section 2 of this act, except when the terms of a conditional gift of private moneys in the account require that a portion of earnings on such moneys be reinvested in the account.

NEW SECTION. Sec. 5. ADMINISTRATION OF PROGRAM—PAYMENTS TO PARTICIPANTS. The higher education coordinating board shall develop and administer the educational assistance grant program for students with dependents. In administering the program, once the balance in the students with dependents grant account is five hundred thousand dollars, the board's powers and duties shall include but not be limited to:

- (1) Adopting necessary rules and guidelines;
- (2) Publicizing the program;
- (3) Accepting and depositing donations into the grant account established in section 4 of this act; and
- (4) Soliciting and accepting grants and donations from private sources for the program.

NEW SECTION. Sec. 6. USE OF GRANTS. The educational assistance grant program for students with dependents grants may be used by eligible participants to attend any public or private college or university in the state of Washington as defined in RCW 28B.10.802. Each participating student may receive an amount to be determined by the higher education coordinating board, with a minimum amount of one thousand dollars per academic year, not to exceed the student's documented financial need for the course of study as determined by the institution.

Educational assistance grants for students with dependents are not intended to supplant any grant scholarship or tax program related to postsecondary education. If the higher education coordinating board finds that the educational

assistance grants for students with dependents supplant or reduce any grant, scholarship, or tax program for categories of students, then the higher education coordinating board shall adjust the financial eligibility criteria or the amount of the grant to the level necessary to avoid supplanting.

NEW SECTION. Sec. 7. This chapter may be known and cited as the gaining independence for students with dependents program.

NEW SECTION. Sec. 8. A new section is added to chapter 74.04 RCW to read as follows:

For purposes of RCW 74.04.005 (10) and (11), "resource" and "income" do not include educational assistance awarded under the gaining independence for students with dependents program as defined in this act for recipients of temporary assistance for needy families.

NEW SECTION. Sec. 9. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 10. Sections 1 through 7 and 9 of this act constitute a new chapter in Title 28B RCW.

Sec. 11. RCW 28B.10.801 and 1999 c 345 s 1 are each amended to read as follows:

(1) The legislature finds that the higher education coordinating board, in consultation with the higher education community, has completed a review of the state need grant program. It is the intent of the legislature to endorse the board's proposed changes to the state need grant program, including:

(a) Reaffirmation that the primary purpose of the state need grant program is to assist low-income, needy, and disadvantaged Washington residents attending institutions of higher education;

(b) A goal that the base state need grant amount over time be increased to be equivalent to the rate of tuition charged to resident undergraduate students attending Washington state public colleges and universities;

(c) State need grant recipients be required to contribute a portion of the total cost of their education through self-help;

(d) State need grant recipients be required to document their need for dependent care assistance after taking into account other public funds provided for like purposes; and

(e) Institutional aid administrators be allowed to determine whether a student eligible for a state need grant in a given academic year may remain eligible for the ensuing year if the student's family income increases by no more than a marginal amount except for funds provided through the educational assistance grant program for students with dependents.

(2) The legislature further finds that the higher education coordinating board, under its authority to implement the proposed changes in subsection (1) of this section, should do so in a timely manner.

(3) The legislature also finds that:

(a) In most circumstances, need grant eligibility should not extend beyond five years or one hundred twenty-five percent of the published length of the program in which the student is enrolled or the credit or clock-hour equivalent; and

(b) State financial aid programs should continue to adhere to the principle that funding follows resident students to their choice of institution of higher education.

Sec. 12. RCW 43.79A.040 and 2002 c 322 s 5, 2002 c 204 s 7, and 2002 c 61 s 6 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 promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the Washington state combined fund drive account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, 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 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 city and county advance right-of-way revolving fund, 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.

Passed by the House March 10, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 20

[Substitute House Bill 1416]

JUVENILE DRIVING PRIVILEGES

AN ACT Relating to restoration of juvenile driving privileges; and amending RCW 46.20.265.

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

Sec. 1. RCW 46.20.265 and 1998 c 41 s 2 are each amended to read as follows:

(1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420, 69.52.070, or a substantially similar municipal ordinance adopted by a local legislative authority, or from a diversion unit pursuant to RCW 13.40.265. The revocation shall be imposed without hearing.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(c) Each offense for which the department receives notice shall result in a separate period of revocation. All periods of revocation imposed under this section that could otherwise overlap shall run consecutively up to the juvenile's twenty-first birthday, and no period of revocation imposed under this section shall begin before the expiration of all other periods of revocation imposed under this section or other law. Periods of revocation imposed consecutively under this section shall not extend beyond the juvenile's twenty-first birthday.

(3)(a) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section if the minimum term of revocation as specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3), 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and subject to subsection (2)(c) of this section.

(b) The juvenile may seek reinstatement of his or her driving privileges from the department when the juvenile reaches the age of twenty-one. A notice from the court reinstating the juvenile's driving privilege shall not be required if reinstatement is pursuant to this subsection.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall

reinstate any driving privileges revoked under this section as provided in (b) of this subsection, subject to subsection (2)(c) of this section.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement.

Passed by the House March 5, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 21

[Substitute House Bill 1445]

MOTOR VEHICLES—MANUFACTURERS, DEALERS

AN ACT Relating to the relationship between motor vehicle manufacturers and dealers; amending RCW 46.96.020, 46.96.105, and 46.96.185; adding new sections to chapter 46.96 RCW; and creating a new section.

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

Sec. 1. RCW 46.96.020 and 1989 c 415 s 2 are each amended to read as follows:

In addition to the definitions contained in RCW 46.70.011, which are incorporated by reference into this chapter, the definitions set forth in this section apply only for the purposes of this chapter.

(1) A "new motor vehicle" is a vehicle that has not been titled by a state and ownership of which may be transferred on a manufacturer's statement of origin (MSO).

(2) "New motor vehicle dealer" means a motor vehicle dealer engaged in the business of buying, selling, exchanging, or otherwise dealing in new motor vehicles or new and used motor vehicles at an established place of business, under a franchise, sales and service agreement, or contract with the manufacturer of the new motor vehicles. However, the term "new motor vehicle dealer" does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011(3)(c) or a motorcycle dealer as defined in chapter 46.94 RCW.

(3) "Franchise" means one or more agreements, whether oral or written, between a manufacturer and a new motor vehicle dealer, under which the new motor vehicle dealer is authorized to sell, service, and repair new motor vehicles, parts, and accessories under a common name, trade name, trademark, or service mark of the manufacturer.

"Franchise" includes an oral or written contract and includes a dealer agreement, either expressed or implied, between a manufacturer and a new motor vehicle dealer that purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motor vehicles manufactured, distributed, or imported by the

manufacturer; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the manufacturer; and (c) the dealer's business relies on the manufacturer for a continued supply of motor vehicles, parts, and accessories.

(4) "Good faith" means honesty in fact and fair dealing in the trade as defined and interpreted in RCW 62A.2-103.

(5) "Designated successor" means:

(a) The spouse, biological or adopted child, stepchild, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motor vehicle dealer who has been nominated by the owner of a new motor vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motor vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(6) "Owner" means a person holding an ownership interest in the business entity operating as a new motor vehicle dealer and who is the designated dealer in the new motor vehicle franchise agreement.

(7) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

Sec. 2. RCW 46.96.105 and 1998 c 298 s I are each amended to read as follows:

(1) Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products.

(2) All claims for warranty work for parts and labor made by dealers under this section shall be submitted to the manufacturer within one year of the date the work was performed. All claims submitted must be paid by the manufacturer within thirty days following receipt, provided the claim has been approved by the manufacturer. The manufacturer has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect, or false claims for a period of one year following payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

(3) All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim, and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days

following receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim.

Sec. 3. RCW 46.96.185 and 2000 c 203 s 1 are each amended to read as follows:

(1) Notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, shall not:

(a) Discriminate between new motor vehicle dealers by selling or offering to sell a like vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;

(b) Discriminate between new motor vehicle dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;

(c) Discriminate between new motor vehicle dealers by using a promotion plan, marketing plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;

(d) Discriminate between new motor vehicle dealers by adopting a method, or changing an existing method, for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer, distributor, factory branch, or factory representative shall disclose in writing to the dealer the method by which new motor vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles;

(e) Give preferential treatment to some new motor vehicle dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motor vehicles sold or distributed by the manufacturer, distributor, factory branch, or factory representative, a new vehicle, parts, or accessories, if the vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials, or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(f) Compete with a new motor vehicle dealer by acting in the capacity of a new motor vehicle dealer, or by owning, operating, or controlling, whether directly or indirectly, a motor vehicle dealership in this state. It is not, however, a violation of this subsection for:

(i) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership for a temporary period, not to exceed two years, during the transition from one owner of the dealership to another where the dealership was previously owned by a franchised dealer and is currently for sale to any qualified independent person at a fair and reasonable price. The temporary operation may be extended for one twelve-month period on petition of the temporary operator to the department. The matter will be handled as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is a franchisee of the petitioning manufacturer or distributor may intervene and participate in a proceeding under this subsection (1)(f)(i). The temporary operator has the

burden of proof to show justification for the extension and a good faith effort to sell the dealership to an independent person at a fair and reasonable price;

(ii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, and where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. Nothing in this subsection (1)(f)(ii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with RCW 46.96.185(1) (a) through (e);

(iii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. The number of dealerships operated under this subsection (1)(f)(iii) may not exceed four percent rounded up to the nearest whole number of a manufacturer's total of new motor vehicle dealer franchises in this state. Nothing in this subsection (1)(f)(iii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with RCW 46.96.185(1) (a) through (e);

(iv) A truck manufacturer to own, operate, or control a new motor vehicle dealership that sells only trucks of that manufacturer's line make with a gross vehicle weight rating of 12,500 pounds or more, and the truck manufacturer has been continuously engaged in the retail sale of the trucks at least since January 1, 1993; or

(v) A manufacturer to own, operate, or control a new motor vehicle dealership trading exclusively in a single line make of the manufacturer if (A) the manufacturer does not own, directly or indirectly, in the aggregate, in excess of forty-five percent of the total ownership interest in the dealership, (B) at the

time the manufacturer first acquires ownership or assumes operation or control of any such dealership, the distance between any dealership thus owned, operated, or controlled and the nearest new motor vehicle dealership trading in the same line make of vehicle and in which the manufacturer has no ownership or control is not less than fifteen miles and complies with the applicable provisions in the relevant market area sections of this chapter, (C) all of the manufacturer's franchise agreements confer rights on the dealer of that line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and the manufacturer agree are appropriate, and (D) as of January 1, 2000, the manufacturer had no more than four new motor vehicle dealers of that manufacturer's line make in this state, and at least half of those dealers owned and operated two or more dealership facilities in the geographic territory or area covered by their franchise agreements with the manufacturer;

(g) Compete with a new motor vehicle dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motor vehicles under the manufacturer's new car warranty and extended warranty. Nothing in this subsection (1)(g), however, prohibits a manufacturer, distributor, factory branch, or factory representative from owning or operating a service facility for the purpose of providing or performing maintenance, repair, or service work on motor vehicles that are owned by the manufacturer, distributor, factory branch, or factory representative;

(h) Use confidential or proprietary information obtained from a new motor vehicle dealer to unfairly compete with the dealer. For purposes of this subsection (1)(h), "confidential or proprietary information" means trade secrets as defined in RCW 19.108.010, business plans, marketing plans or strategies, customer lists, contracts, sales data, revenues, or other financial information;

(i) Terminate, cancel, or fail to renew a franchise with a new motor vehicle dealer based upon any of the following events, which do not constitute good cause for termination, cancellation, or nonrenewal under RCW 46.96.060: (A) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles, or (B) the fact that the new motor vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor with the prior written approval of the manufacturer or distributor, if the approval was required under the terms of the new motor vehicle dealer's franchise agreement; or

(j) Coerce or attempt to coerce a motor vehicle dealer to refrain from, or prohibit or attempt to prohibit a new motor vehicle dealer from acquiring, owning, having an investment in, participating in the management of, or holding a franchise agreement for the sale or service of another make or line of new motor vehicles or related products, or establishing another make or line of new motor vehicles or service in the same dealership facilities, if the prohibition against acquiring, owning, investing, managing, or holding a franchise for such additional make or line of vehicles or products, or establishing another make or line of new motor vehicles or service in the same dealership facilities, is not supported by reasonable business considerations. The burden of proving that reasonable business considerations support or justify the prohibition against the

additional make or line of new motor vehicles or products or nonexclusive facilities is on the manufacturer.

(2) Subsection (1)(a), (b), and (c) of this section do not apply to sales to a motor vehicle dealer: (a) For resale to a federal, state, or local government agency; (b) where the vehicles will be sold or donated for use in a program of driver's education; (c) where the sale is made under a manufacturer's bona fide promotional program offering sales incentives or rebates; (d) where the sale of parts or accessories is under a manufacturer's bona fide quantity discount program; or (e) where the sale is made under a manufacturer's bona fide fleet vehicle discount program. For purposes of this subsection, "fleet" means a group of fifteen or more new motor vehicles purchased or leased by a dealer at one time under a single purchase or lease agreement for use as part of a fleet, and where the dealer has been assigned a fleet identifier code by the department of licensing.

(3) The following definitions apply to this section:

(a) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor, factory branch, or factory representative, whether paid to the dealer or the ultimate purchaser of the vehicle.

(b) "Control" or "controlling" means (i) the possession of, title to, or control of ten percent or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary, or (ii) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.

(c) "Motor vehicles" does not include trucks that are 14,001 pounds gross vehicle weight and above or recreational vehicles as defined in RCW 43.22.335.

(d) "Operate" means to manage a dealership, whether directly or indirectly.

(e) "Own" or "ownership" means to hold the beneficial ownership of one percent or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(4) A violation of this section is deemed to affect the public interest and constitutes an unlawful and unfair practice under chapter 19.86 RCW. A person aggrieved by an alleged violation of this section may petition the department to have the matter handled as an adjudicative proceeding under chapter 34.05 RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 46.96 RCW to read as follows:

Right of First Refusal. (1) In the event of a proposed sale or transfer of a new motor vehicle dealership involving the transfer or sale of more than fifty percent of the ownership interest in, or more than fifty percent of the assets of, the dealership at the time of the transfer or sale, where the franchise agreement for the dealership contains a right of first refusal in favor of the manufacturer or distributor, then notwithstanding the terms of the franchise agreement, the

manufacturer or distributor must be permitted to exercise a right of first refusal to acquire the dealership only if all of the following requirements are met:

(a) The manufacturer or distributor sends by certified mail, return receipt requested, or delivers by personal service, notice of its intent to exercise its right of first refusal within the lesser of (i) forty-five days of receipt of the completed proposal for the proposed sale or transfer, or (ii) the time period specified in the dealership's franchise agreement; and

(b) The exercise of the right of first refusal will result in the motor vehicle dealer receiving consideration, terms, and conditions that are equal to or better than that for which the dealer has contracted in connection with the proposed transaction.

(2) Notwithstanding subsection (1) of this section, the manufacturer's or distributor's right of first refusal does not apply to transfer of a dealership under RCW 46.96.110, and does not apply to a proposed transaction involving any of the following purchasers or transferees:

(a) A purchaser or transferee who has been preapproved by the manufacturer or distributor with respect to the transaction;

(b) A family member or members, including the spouse, biological or adopted child, stepchild, grandchild, spouse of a child or grandchild, brother, sister, or parent of the dealer-operator, or one or more of the dealership's owners;

(c) A manager continuously employed by the motor vehicle dealer in the dealership during the previous three years who is otherwise qualified as a dealer-operator by meeting the reasonable and uniformly applied standards for approval of an application as a new motor vehicle dealer-operator by the manufacturer;

(d) A partnership, corporation, limited liability company, or other entity controlled by any of the family members, identified in (b) of this subsection, of the dealer-operator; or

(e) A trust established or to be established for the purpose of allowing the new motor vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards, or provides for the succession of the franchise agreement to designated family members identified in (b) of this subsection, or qualified management identified in (c) of this subsection, in the event of the death or incapacity of the dealer-operator or its principal owner or owners.

(3) As a condition to the manufacturer or distributor exercising its right of first refusal, the manufacturer or distributor shall pay the reasonable expenses, including attorneys' fees, incurred by the dealer's proposed purchaser or transferee in negotiating, and undertaking any action to consummate, the contract for the proposed sale of the dealership up to the time of the manufacturer's or distributor's exercise of that right. In addition, the manufacturer or distributor shall pay any fees and expenses of the motor vehicle dealer arising on and after the date the manufacturer or distributor gives notice of the exercise of its right of first refusal, and incurred by the motor vehicle dealer as a result of alterations to documents, or additional appraisals, valuations, or financial analyses caused or required of the dealer by the manufacturer or distributor to consummate the contract for the sale of the dealership to the manufacturer's or distributor's proposed transferee, that would not have been incurred but for the manufacturer's or distributor's exercise of its right of first refusal. These expenses and fees must be paid by the manufacturer or distributor to the dealer and to the dealer's proposed purchaser or transferee on

or before the closing date of the sale of the dealership to the manufacturer or distributor if the party entitled to reimbursement has submitted or caused to be submitted to the manufacturer or distributor, an accounting of these expenses and fees within thirty days after receipt of the manufacturer's or distributor's written request for the accounting. A manufacturer or distributor may request the accounting before exercising its right of first refusal.

(4) As a further condition to the exercise of its right of first refusal, a manufacturer or distributor shall assume and guarantee the lease or shall acquire the real property on which the motor vehicle franchise is conducted. Unless otherwise agreed to by the dealer and manufacturer or distributor, the lease terms or the real property acquisition terms must be the same as those on which the lease or property was to be transferred or sold to the dealer's proposed purchaser or transferee.

(5) If the selling dealer has disclosed to the proposed purchaser or transferee, in writing, the existence of the manufacturer's or distributor's right of first refusal, then the selling dealer has no liability to the proposed purchaser or transferee for a claim for damages resulting from the manufacturer or distributor exercising its right of first refusal. If the existence of the manufacturer's or distributor's right of first refusal was disclosed by the selling dealer to the proposed purchaser or transferee, in writing, before or at the time of execution of the purchase and sale or transfer agreement, the manufacturer or distributor shall indemnify, hold harmless, and defend the selling dealer from and against any and all claims, damages, losses, actions, or causes of action asserted by the dealer's proposed purchaser or transferee against the selling dealer arising from the manufacturer's or distributor's exercise of its right of first refusal, and has the right, under this section, to file a motion on behalf of the dealer to dismiss the actions or causes of action asserted by the dealer's proposed purchaser or transferee.

NEW SECTION. Sec. 5. A new section is added to chapter 46.96 RCW to read as follows:

Manufacturer Incentive Programs. (1) A manufacturer or distributor shall pay a motor vehicle dealer's claim for payment or other compensation due under a manufacturer incentive program within thirty days after approval of the claim. A claim that is not disapproved or disallowed within thirty days after the manufacturer or distributor receives the claim is deemed automatically approved. If the motor vehicle dealer's claim is not approved, the manufacturer or distributor shall provide the dealer with written notice of the reasons for the disapproval at the time notice of disapproval is given.

(2) A manufacturer may not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim-processing requirement that results in a clerical error or other administrative technicality.

(3) Notwithstanding the terms of a franchise agreement or other contract with a manufacturer or distributor, a motor vehicle dealer has one year after the expiration of a manufacturer or distributor incentive program to submit a claim for payment or compensation under the program.

(4) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (5) of this section, after the

expiration of one year after the date of payment of a claim under a manufacturer or distributor incentive program, a manufacturer or distributor may not:

(a) Charge back to a motor vehicle dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the manufacturer or distributor under an incentive program;

(b) Charge back to a motor vehicle dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) Audit the records of a motor vehicle dealer to determine compliance with the terms of an incentive program. Where, however, a manufacturer or distributor has reasonable grounds to believe that the dealer committed fraud with respect to the incentive program, the manufacturer or distributor may audit the dealer for a fraudulent claim during any period for which an action for fraud may be commenced under applicable state law.

(5) Notwithstanding subsection (4)(a) and (b) of this section, a manufacturer or distributor may make charge-backs to a motor vehicle dealer if, after completion of an audit of the dealer's records, the manufacturer or distributor can show, by a preponderance of the evidence, that (a) the claim was intentionally false or fraudulent at the time it was submitted to the manufacturer or distributor, or (b) with respect to a claim under a service incentive program, the repair work was improperly performed in a substandard manner or was unnecessary to correct a defective condition.

NEW SECTION. Sec. 6. A new section is added to chapter 46.96 RCW to read as follows:

Venue. Notwithstanding the provisions of a franchise agreement or other provision of law to the contrary, the venue for a cause of action, claim, lawsuit, administrative hearing or proceeding, arbitration, or mediation, whether arising under this chapter or otherwise, in which the parties or litigants are a manufacturer or distributor and one or more motor vehicle dealers, is the state of Washington. It is the public policy of this state that venue provided for in this section may not be modified or waived in any contract or other agreement, and any provision contained in a franchise agreement that requires arbitration or litigation to be conducted outside the state of Washington is void and unenforceable.

This section does not apply to a voluntary dispute resolution procedure that is not binding on the dealer.

NEW SECTION. Sec. 7. Captions used in this act are not part of the law.

Passed by the House March 6, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 22

[Engrossed Substitute House Bill 1466]

ENVIRONMENTAL EDUCATION

AN ACT Relating to natural science, wildlife, and environmental education; adding new sections 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) Effective, natural science, wildlife, and environmental education programs provide the foundation for the development of literate children and adults, setting the stage for lifelong learning. Furthermore, integrating the basic subject areas of the common school curriculum in chapter 28A.230 RCW through natural science, wildlife, and environmental education offers many opportunities for achieving excellence in our schools. Well-designed programs, aligned with the state's essential academic learning requirements, contribute to the state's educational reform goals.

(2) Washington is fortunate to have institutions and programs that currently provide quality natural science, wildlife, and environmental education and teacher training that is already aligned with the state's essential academic learning requirements.

(3) The legislature intends to further the development of natural science, wildlife, and environmental education by establishing a competitive grant program, funded through state moneys to the extent those moneys are appropriated, or made available through other sources, for proven natural science, wildlife, and environmental education programs that are fully aligned with the state's essential academic learning requirements.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.300 RCW to read as follows:

The Washington natural science, wildlife, and environmental education partnership account is hereby created in the custody of the state treasurer to provide natural science, wildlife, and environmental education opportunities for teachers and students to help achieve the highest quality of excellence in education through compliance with the essential academic learning requirements. Revenues to the account shall consist of appropriations made by the legislature or other sources. Grants and their administration shall be paid from the account. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account. The fund is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.300 RCW to read as follows:

(1) The natural science, wildlife, and environmental education grant program is hereby created, subject to the availability of funds in the natural science, wildlife, and environmental education partnership account. The program is created to promote proven and innovative natural science, wildlife, and environmental education programs that are fully aligned with the state's essential academic learning requirements, and includes but is not limited to instruction about renewable resources, responsible use of resources, and conservation.

(2) The superintendent of public instruction shall establish and publish funding criteria for environmental, natural science, wildlife, forestry, and agricultural education grants. The office of superintendent of public instruction shall involve a cross-section of stakeholder groups to develop socially, economically, and environmentally balanced funding criteria. These criteria shall be based on compliance with the essential academic learning requirements

and use methods that encourage critical thinking. The criteria must also include environmental, natural science, wildlife, forestry, and agricultural education programs with one or more of the following features:

(a) Interdisciplinary approaches to environmental, natural science, wildlife, forestry, and agricultural issues;

(b) Programs that target underserved, disadvantaged, and multicultural populations;

(c) Programs that reach out to schools across the state that would otherwise not have access to specialized environmental, natural science, wildlife, forestry, and agricultural education programs;

(d) Proven programs offered by innovative community partnerships designed to improve student learning and strengthen local communities.

(3) Eligible uses of grants include, but are not limited to:

(a) Continuing in-service and preservice training for educators with materials specifically developed to enable educators to teach essential academic learning requirements in a compelling and effective manner;

(b) Proven, innovative programs that align the basic subject areas of the common school curriculum in chapter 28A.230 RCW with the essential academic learning requirements; the basic subject areas should be integrated by using environmental education, natural science, wildlife, forestry, agricultural, and natural environment curricula to meet the needs of various learning styles; and

(c) Support and equipment needed for the implementation of the programs in this section.

(4) Grants may only be disbursed to nonprofit organizations exempt from income tax under section 501(c) of the federal internal revenue code that can provide matching funds or in-kind services.

(5) Grants may not be used for any partisan or political activities.

Passed by the House March 13, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 23

[Engrossed Substitute House Bill 1564]

COUNTY TREASURER—FISCAL PROVISIONS

AN ACT Relating to clarifying county treasurer fiscal provisions; amending RCW 39.46.050, 84.56.120, 84.56.340, 84.64.060, 84.69.050, 84.69.070, and 36.29.190; and reenacting and amending RCW 84.64.080.

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

Sec. 1. RCW 39.46.050 and 1983 c 167 s 5 are each amended to read as follows:

Each local government authorized to issue bonds is authorized to establish lines of credit with any qualified public depository to be drawn upon in exchange for its bonds or other obligations, to delegate to its ~~((fiscal officer))~~ treasurer authority to determine the amount of credit extended, and to pay interest and other finance or service charges. The interest rates on such bonds or

other obligations may be a fixed rate or rates set periodically or a variable rate or rates determined by agreement of the parties.

Sec. 2. RCW 84.56.120 and 1991 c 245 s 20 are each amended to read as follows:

After personal property has been assessed, it shall be unlawful for any person to remove the ~~((same))~~ personal property subject to priority tax liens created pursuant to RCW 84.60.010 and 84.60.020 from the county in which the property was assessed and from the state until taxes and interest are paid, or until notice has been given to the county treasurer describing the property to be removed and in case of public or private sales of personal property, a list of the property desired to be sold shall be sent to the treasurer, ~~((and no property shall be sold at such sale until the tax has been paid;))~~ the tax ~~((to))~~ will be computed upon the consolidated tax levy for the previous year. Any taxes owed shall become an automatic lien upon the proceeds of any auction and shall be remitted to the county treasurer before final distribution to any person, as defined in this section. If proceeds are distributed in violation of this section, the seller or agent of the seller shall assume all liability for taxes, interest, and penalties owed to the county treasurer. Any person violating the provisions of this section shall be guilty of a misdemeanor. For the purposes of this section, "person" includes a property owner, mortgagor, creditor, or agent.

Sec. 3. RCW 84.56.340 and 1997 c 393 s 16 are each amended to read as follows:

Any person desiring to pay taxes upon any part or parts of real property heretofore or hereafter assessed as one parcel, or tract, or upon such person's undivided fractional interest in such a property, may do so by applying to the county assessor, who must carefully investigate and ascertain the relative or proportionate value said part or part interest bears to the whole tract assessed, on which basis the assessment must be divided, and the assessor shall forthwith certify such proportionate value to the county treasurer: PROVIDED, That excepting when property is being acquired for public use, or where a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise, no segregation of property for tax purposes shall be made under this section unless all current year and delinquent taxes and assessments on the entire tract have been paid in full. The county treasurer, upon receipt of certification, shall duly accept payment and issue receipt on the apportionment certified by the county assessor. In cases where protest is filed to said division appeal shall be made to the county legislative authority at its next regular session for final division, and the county treasurer shall accept and receipt for said taxes as determined and ordered by the county legislative authority. Any person desiring to pay on an undivided interest in any real property may do so by paying to the county treasurer a sum equal to such proportion of the entire taxes charged on the entire tract as interest paid on bears to the whole.

Sec. 4. RCW 84.64.060 and 2002 c 168 s 9 are each amended to read as follows:

Any person owning ~~((an))~~ a recorded interest in lands or lots upon which judgment is prayed, as provided in this chapter, may in person or by agent pay the taxes, interest and costs due thereon to the county treasurer of the county in

which the same are situated, at any time before the day of the sale; and for the amount so paid he or she shall have a lien on the property liable for taxes, interest and costs for which judgment is prayed; and the person or authority who shall collect or receive the same shall give a receipt for such payment, or issue to such person a certificate showing such payment. If paying by agent, the agent shall provide notarized documentation of the agency relationship.

Sec. 5. RCW 84.64.080 and 1999 c 153 s 72 and 1999 c 18 s 8 are each reenacted and amended to read as follows:

The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of the lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or the court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases the court shall proceed to determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in the notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. The order shall be signed by the judge of the superior court, shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell the property for the sum as set forth in the order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. The acceptable minimum bid shall be the total amount of taxes, interest, and costs. All sales shall be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county

treasurer may direct, and shall continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of the treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of in the state of Washington, and an order of sale duly issued by the court, entered the day of,, in proceedings for foreclosure of tax liens upon real property, as per provisions of law, I shall on the day of,, at o'clock a.m., at in the city of, and county of, state of Washington, sell the real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due.

In witness whereof, I have hereunto affixed my hand and seal this day of,

.....
Treasurer of
county.

No county officer or employee shall directly or indirectly be a purchaser of such property at such sale.

If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

If the highest amount bid for any such separate unit tract or lot is in excess of the minimum bid due upon the whole property included in the certificate of delinquency, the excess shall be refunded following payment of all water-sewer district liens, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. Assignments of interests, deeds, or other documents executed or recorded after filing the certificate of delinquency shall not affect the payment of excess funds to the record owner. In the event no claim for the excess is received by the county treasurer within three years after the date of the sale he or she shall at expiration of the three year period deposit such excess in the current expense fund of the county. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his or her office, shall be recorded in the same manner as other conveyances of real property, and shall vest in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance, and shall be substantially in the following form:

State of Washington

ss.

County of

This indenture, made this day of,, between, as treasurer of county, state of Washington, party of the first part, and, party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the day of,, pursuant to a real property tax judgment entered in the superior court in the county of on the day of,, in proceedings to foreclose tax liens upon real property and an order of sale duly issued by the court, duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that the has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I, county treasurer of the county of, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto, his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this day of, A.D.
.
County Treasurer.

Sec. 6. RCW 84.69.050 and 1988 c 222 s 31 are each amended to read as follows:

The part of the refund representing amounts paid to the state, including interest as provided in RCW 84.69.100, shall be paid from the county general fund and the department of revenue shall, upon the next succeeding settlement with the county, certify this amount refunded to the county: PROVIDED, That when a refund of tax funds pursuant to state levies is required, the department of revenue shall authorize adjustment procedures whereby counties may deduct from property tax remittances to the state the amount required to cover the state's portion of the refunds.

Sec. 7. RCW 84.69.070 and 1991 c 245 s 38 are each amended to read as follows:

Refunds ordered with respect to taxing districts, including interest as provided in RCW 84.69.100, shall be paid by checks drawn by the county treasurer upon such available funds, if any, as the taxing districts may have on deposit in the county treasury, or in the event such funds are insufficient, then out of funds subsequently accruing to such taxing district and on deposit in the county treasury. When such refunds are made as a result of taxes paid under levies or statutes adjudicated to be illegal or unconstitutional all administrative costs including interest paid on the refunds incurred by the county treasurer in making such refunds shall be a charge against the funds of such districts and/or the state on a pro rata basis until the county current expense fund is fully reimbursed for the administrative expenses incurred in making such refund: PROVIDED, That whenever orders for refunds of ad valorem taxes promulgated by the county treasurer or county legislative authority and unpaid checks shall expire and become void as provided in RCW 84.69.110, then any moneys remaining in a refund account established by the county treasurer for any taxing district may be transferred by the county treasurer from such refund account to

the county current expense fund to reimburse the county for the administrative expense incurred in making refunds as prescribed herein. Any excess then remaining in the taxing district refund account may then be transferred by the county treasurer to the current expense fund of the taxing district for which the tax was originally levied and collected.

Sec. 8. RCW 36.29.190 and 1997 c 393 s 19 are each amended to read as follows:

County treasurers are authorized to accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for any payment of any kind including, but not limited to, taxes, fines, interest, penalties, special assessments, fees, rates, charges, or moneys due counties. A payer desiring to pay by a credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication shall bear the cost of processing the transaction in an amount determined by the treasurer, unless the county legislative authority or the legislative authority of a district where the county treasurer serves as ex officio treasurer finds that it is in the best interests of the county or district to not charge transaction processing costs for all payment transactions made for a specific category of nontax payments (~~due~~) received by the county treasurer, including, but not limited to, fines, interest not associated with taxes, penalties not associated with taxes, special assessments, fees, rates, and charges. The treasurer's cost determination shall be based upon costs incurred by the treasurer and may not, in any event, exceed the additional direct costs incurred by the county to accept the specific form of payment utilized by the payer.

Passed by the House March 6, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 24

[Substitute House Bill 1759]

FINANCIAL INSTITUTIONS

AN ACT Relating to financial institution law parity; amending RCW 32.08.142, 32.08.146, and 32.32.500; reenacting and amending RCW 30.04.215; adding new sections to chapter 30.04 RCW; and adding new sections to chapter 32.08 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 30.04 RCW to read as follows:

Notwithstanding any other provisions of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, a bank or trust company shall have the powers and authorities conferred upon a mutual savings bank under Title 32 RCW, only if:

(1) The bank or trust company notifies the director at least thirty days prior to the exercise of such power or authority by the bank or trust company, unless the director waives or modifies this requirement for notice as to the exercise of a

power, authority, or category of powers or authorities by the bank or trust company;

(2) The director finds that the exercise of such powers and authorities by the bank or by the trust company serves the convenience and advantage of depositors, borrowers, or the general public; and

(3) The director finds that the exercise of such powers and authorities by the bank or by the trust company maintains the fairness of competition and parity between banks or trust companies and mutual savings banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of mutual savings banks shall apply to banks or trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this section.

Sec. 2. RCW 30.04.215 and 1995 c 344 s 2 and 1995 c 134 s 2 are each reenacted and amended to read as follows:

(1) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank or trust company may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of ~~((December 31, 1993))~~ the effective date of this act.

(2) A bank or trust company that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe or unsound practice by the bank or trust company and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the bank or trust company is otherwise qualified, he or she shall ~~((forthwith))~~ immediately inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or that the bank or trust company is not otherwise qualified, he or she shall ~~((forthwith))~~ promptly inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies.

(3) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, a bank or trust company shall have the powers and authorities conferred as of August 31, 1994, or a subsequent date not later than the effective date of this act, upon ~~((a))~~ a federally chartered bank doing

business in this state. A bank or trust company may exercise the powers and authorities conferred on a federally chartered bank after (~~this date~~) the effective date of this act, only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of depositors, borrowers, or the general public; and

(b) Maintains the fairness of competition and parity between state-chartered banks or trust companies and federally chartered banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federally chartered banks shall apply to banks or trust companies exercising those powers or authorities permitted under this subsection but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this subsection.

(4) Any activity which may be performed by a bank or trust company, except the taking of deposits, may be performed by (a) a corporation or (b) another entity approved by the director, which in either case is owned in whole or in part by the bank or trust company.

NEW SECTION. Sec. 3. A new section is added to chapter 30.04 RCW to read as follows:

Notwithstanding any restrictions, limitations, requirements, or other provisions of law, a financial institution, as defined in RCW 30.22.040(12), may charge, take, receive, or reserve interest, discount or other points, finance charges, or other similar charges on any loan or other extension of credit, at a rate or amount that is equal to, or less than, the maximum rate or amount of interest, discount or other points, finance charges, or other similar charges that national banks located in any other state or states may charge, take, receive, or reserve, under 12 U.S.C. Sec. 85, on loans or other extensions of credit to residents of this state. However, this section does not authorize any subsidiary of a bank, of a trust company, of a mutual savings bank, of a savings and loan association, or of a credit union to charge, take, receive, or reserve interest, discount or other points, finance charges, or other similar charges on any loan or other extension of credit, unless the subsidiary is itself a bank, trust company, mutual savings bank, savings and loan association, or credit union.

NEW SECTION. Sec. 4. A new section is added to chapter 32.08 RCW to read as follows:

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities that national banks had on the effective date of this act.

The restrictions, limitations, and requirements applicable to specific powers or authorities of national banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section.

NEW SECTION. Sec.5. A new section is added to chapter 32.08 RCW to read as follows:

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities conferred upon a national bank after the effective date of this act, only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of depositors, borrowers, or the general public; and
- (2) Maintains the fairness of competition and parity between mutual savings banks and national banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of national banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section.

NEW SECTION. Sec. 6. A new section is added to chapter 32.08 RCW to read as follows:

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under this title, a mutual savings bank has the powers and authorities that a bank has under Title 30. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section.

Sec. 7. RCW 32.08.142 and 1999 c 14 s 18 are each amended to read as follows:

Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities that ((a)) any federal mutual savings bank had on July 28, 1985, or a subsequent date not later than ((~~July 25, 1999~~)) the effective date of this act. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section.

Sec. 8. RCW 32.08.146 and 1999 c 14 s 19 are each amended to read as follows:

A mutual savings bank may exercise the powers and authorities granted, after ((~~July 25, 1999~~)) the effective date of this act, to federal mutual savings

banks or their successors under federal law, only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of depositors and borrowers; and
- (2) Maintains the fairness of competition and parity between state-chartered savings banks and federal savings banks or their successors under federal law.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks or their successors under federal law shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section.

Sec. 9. RCW 32.32.500 and 1999 c 14 s 30 are each amended to read as follows:

(1) A savings bank may merge with, consolidate with, convert into, acquire a branch or branches of, or sell its branch or branches to any depository institution((s)) as defined in 12 U.S.C. Sec. 461 ((~~or~~)), any financial institution chartered or authorized to do business under the laws of any state, territory, province, or other jurisdiction of the United States or another nation, or ((~~to a~~)) any holding company or subsidiary ((~~thereof~~)) of such an institution, subject to the approval of (a) the director of financial institutions if the surviving institution is one chartered under Title 30, 31, 32, or 33 RCW, or (b) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository institution that is federally chartered under the laws of the United States, the federal regulatory authority having jurisdiction over the transaction under the applicable laws, or (c) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of another state or territory of the United States, the regulatory authority having jurisdiction over that transaction under the applicable laws, or (d) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of a nation other than the United States or of a state, territory, province, or other jurisdiction of such nation, the director of financial institutions, or (e) if the surviving institution is to be a bank holding company or financial holding company, the Federal Reserve Board or its successor under 12 U.S.C. Sec. 1842 (a) and (d).

(2) In the case of a liquidation, acquisition, merger, consolidation, or conversion of a converted savings bank, chapter 32.34 RCW shall apply.

(3) The concentration limits applicable to these transactions, pursuant to 12 U.S.C. Sec. 1831u(b)(2)(C) with respect to interstate transactions, shall be those imposed pursuant to 12 U.S.C. Sec. 1828(c)(5), as applied by the federal regulatory authority having jurisdiction over that transaction under the applicable law, in lieu of the concentration limits of 12 U.S.C. Sec. 1831u(b)(2)(B).

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

Passed by the House March 11, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 25

[Substitute House Bill 1930]

TOBACCO PRODUCTS—MANUFACTURERS, WHOLESALERS, DISTRIBUTORS

AN ACT Relating to restricting the ability of tobacco product manufacturers, wholesalers, and distributors and other persons to violate or to facilitate the violation of chapter 70.157 RCW; amending RCW 82.24.130, 82.24.145, and 82.24.210; adding a new chapter to Title 70 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that violations of RCW 70.157.020 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The legislature finds the enacting procedural enhancements will help prevent violations and aid the enforcement of RCW 70.157.020 and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health. The provisions of this act are not intended to and shall not be interpreted to amend chapter 70.157 RCW.

NEW SECTION. Sec. 2. The following definitions apply to this chapter unless the context clearly requires otherwise.

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Board" means the liquor control board.

(3) "Cigarette" has the same meaning as in RCW 70.157.010(d).

(4) "Director" means the director of the department of revenue except as otherwise noted.

(5) "Directory" means the directory to be created and published on a web site by the attorney general pursuant to section 3(2) of this act.

(6) "Distributor" has the same meaning as in RCW 82.26.010(3), except that for purposes of this chapter, no person is a distributor if that person does not deal with cigarettes as defined in this section.

(7) "Master settlement agreement" has the same meaning as in RCW 70.157.010(e).

(8) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(9) "Participating manufacturer" has the meaning given that term in section II(jj) of the master settlement agreement.

(10) "Qualified escrow fund" has the same meaning as in RCW 70.157.010(f).

(11) "Stamp" means "stamp" as defined in RCW 82.24.010(7) or as referred to in RCW 43.06.455(4).

(12) "Tobacco product manufacturer" has the same meaning as in RCW 70.157.010(i).

(13) "Units sold" has the same meaning as in RCW 70.157.010(j).

(14) "Wholesaler" has the same meaning as in RCW 82.24.010.

NEW SECTION. Sec. 3. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer is either a participating manufacturer; or is in full compliance with RCW 70.157.020(b)(1), including all payments required by that section or this act.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification: (i) A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; (ii) a list of all of its brand families that have been sold in the state at anytime during the current calendar year; (iii) indicating, by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and (iv) identifying by name and address any other manufacturer of brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(c) In the case of a nonparticipating manufacturer, the certification shall further certify:

(i) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required by section 4 of this act;

(ii) That the nonparticipating manufacturer: (A) Has established and continues to maintain a qualified escrow fund; and (B) has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(iii) That the nonparticipating manufacturer is in full compliance with RCW 70.157.020(b)(1) and this chapter, and any rules adopted pursuant thereto; and

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder; (B) the account number of the qualified escrow fund and any subaccount number for the state of Washington; (C) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and (D) the

amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder.

(d) A tobacco product manufacturer may not include a brand family in its certification unless: (i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of RCW 70.157.020(b)(1). Nothing in this section limits or otherwise affects the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of RCW 70.157.020.

(e) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than November 1, 2003, the attorney general shall develop and publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of this section and all brand families that are listed in these certifications, except as noted below:

(a) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection (1)(b) and (c) of this section, unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that: (i) Any escrow payment required pursuant to RCW 70.157.020(b)(1) for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or (ii) any outstanding final judgment, including interest, for a violation of RCW 70.157.020(b)(1) that has not been fully satisfied for the brand family or manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter. The attorney general shall transmit, by email or other practicable means to each wholesaler or distributor, notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the wholesaler or distributor and a tobacco product manufacturer, the wholesaler or distributor shall be entitled to a refund from a tobacco product manufacturer for any money paid by the wholesaler or

distributor to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the wholesaler or distributor on the date of notice by the attorney general of the removal from the directory of that tobacco product manufacturer or the brand family of the cigarettes. The attorney general shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the wholesaler or distributor any refund due.

(d) Every wholesaler and distributor shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(e) A tobacco product manufacturer included in the directory may request that a new brand family be certified and added to the directory. Within forty-five business days of receiving the request, the attorney general will respond by either: (i) Certifying the new brand family; or (ii) denying the request. However, in cases where the attorney general determines that it needs clarification as to whether the requestor is actually the tobacco product manufacturer, the attorney general may take more time as needed to clarify the request, to locate and assemble information or documents needed to process the request, and to notify persons or agencies affected by the request.

(f) The web site will state that this act applies only to cigarettes including, pursuant to the definition of "cigarettes" in this act, roll-your-own tobacco.

(3) It is unlawful for any person (a) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, or to pay or cause to be paid the tobacco products tax on any package or container; or (b) to sell, offer, or possess for sale in this state or import for sale in this state, any cigarettes of a tobacco product manufacturer or brand family not included in the directory.

NEW SECTION. Sec. 4. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter and RCW 70.157.020(b)(1), may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this section,

shall be deemed to have appointed the secretary of state as the agent and may be proceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory.

NEW SECTION. Sec. 5. (1) In addition to the reporting requirements under RCW 70.157.010(j) and the rules adopted thereunder, not later than twenty-five calendar days after the end of each calendar month, and more frequently if directed by the director, each wholesaler and distributor shall submit information the director requires to facilitate compliance with this chapter, including, but not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll-your-own, the equivalent stick count for which the wholesaler or distributor affixed stamps during the previous calendar month or otherwise paid the tax due for the cigarettes. Each wholesaler and distributor shall maintain and make available to the director, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general or the director for a period of five years.

(2) Information or records required to be furnished to the department, the board, or the attorney general are confidential and shall not be disclosed. However, the director and the board are authorized to disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this chapter. The director, the board, and the attorney general may share with each other the information received under this chapter, and may share information with other federal, state, or local agencies, including without limitation the board, only for purposes of enforcement of this chapter, RCW 70.157.020, or corresponding laws of other states. If a tobacco product manufacturer that is required to establish a qualified escrow fund under RCW 70.157.020 disputes the attorney general's determination of what that manufacturer needs to place into escrow, and the attorney general determines that the dispute can likely be resolved by disclosing reports from the relevant distributors and wholesalers indicating the sales or purchases of the tobacco manufacturer's products, then the attorney general shall request voluntary waivers of confidentiality so that the reports may be disclosed to the tobacco product manufacturer to help resolve the dispute. If the waivers are provided, then the director and the attorney general are authorized to disclose the waived confidential information collected on the sales or purchases of cigarettes to the tobacco product manufacturer. However, before the attorney general or the director discloses the waived confidential information, the tobacco product manufacturer must provide to the attorney general all records relating to its sales or purchases of cigarettes in dispute. The information provided to a tobacco product manufacturer pursuant to this subsection (2) shall be limited to brands or products of that manufacturer only, may be used only for the limited purpose of determining the appropriate escrow deposit, and may not be disclosed by the tobacco product manufacturer.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with RCW

70.157.020(b)(1), of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to section 3 of this act, this section, and chapters 82.24 and 82.26 RCW, the director, the board, or the attorney general may require a wholesaler, distributor, or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this chapter. If the director, the board, or the attorney general makes a request for information pursuant to this subsection (4), the tobacco product manufacturer, distributor, or wholesaler shall comply promptly.

(5) A nonparticipating manufacturer that either: (a) Has not previously made escrow payments to the state of Washington pursuant to RCW 70.157.020; or (b) has not actually made any escrow payments for more than one year, shall make the required escrow deposits in quarterly installments during the first year in which the sales covered by the deposits are made or in the first year in which the payments are made. The director or the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

NEW SECTION. Sec. 6. (1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated section 3(3) of this act or any rule adopted pursuant to this chapter, the director or the board may revoke or suspend the license of the wholesaler in the manner provided by chapter 82.24 or 82.32 RCW. Each stamp affixed and each sale or offer to sell cigarettes in violation of section 3(3) of this act shall constitute a separate violation. For each violation of this chapter, the director or the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of section 3(3) of this act or any rules adopted pursuant thereto. The penalty shall be imposed in the manner provided by chapter 82.24 RCW.

(2) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of section 3(3) or 5 (1) or (4) of this act by a person and to compel the person to comply with these sections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

(3) It is unlawful for a person to: (a) Sell or distribute cigarettes or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes, that the person knows or should know are intended for distribution or sale in the state in violation of section 3(3) of this act. A violation of this subsection (3) is a gross misdemeanor.

(4) Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this chapter shall lie solely with the

attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

NEW SECTION. Sec. 7. (1) A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer shall be final agency action for purposes of review under RCW 34.05.570(4).

(2) No person shall be issued a license or granted a renewal of a license to act as a wholesaler unless the person has certified in writing under penalty of perjury, that the person will comply fully with this section.

(3) The first reports of wholesalers and distributors are due August 25, 2003. The certifications by a tobacco product manufacturer described in section 3(1) of this act are due September 15, 2003. The directory described in section 3(2) of this act shall be published or made available by November 1, 2003.

(4) The attorney general, the board, and the director may adopt rules as necessary to effect the administration of this chapter.

(5) In any action brought by the state to enforce this chapter, the state is entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(6) If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the general fund. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

NEW SECTION. Sec. 8. If a court of competent jurisdiction finds that the provisions of this act and chapter 70.157 RCW conflict and cannot be harmonized, then the provisions of chapter 70.157 RCW shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this act causes chapter 70.157 RCW no longer to constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this act shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this act is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of this act or any part thereof.

Sec. 9. RCW 82.24.130 and 1999 c 193 s 3 are each amended to read as follows:

(1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; and any container or package of cigarettes possessed or held for sale that does not comply with this chapter.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or

purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(d) Any cigarettes that are stamped, sold, imported, or offered or possessed for sale in this state in violation of section 3(3) of this act. For the purposes of this subsection (1)(d), "cigarettes" has the meaning as provided in section 2(3) of this act.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler or retailer, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband.

Sec. 10. RCW 82.24.145 and 1999 c 193 s 4 are each amended to read as follows:

When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all moneys shall be deposited in the general fund of the state. Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, cigarettes seized for a violation of RCW 82.24.035 or section 3(3) of this act

shall be destroyed. For the purposes of this subsection (3) "cigarettes" has the same meaning as provided in section 2(3) of this act.

Sec. 11. RCW 82.24.210 and 1975 1st ex.s. c 278 s 68 are each amended to read as follows:

The department of revenue may promulgate rules and regulations providing for the refund to dealers for the cost of stamps affixed to articles taxed herein, which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber. In the case of any articles to which stamps have been affixed, and which articles have been sold and shipped to a regular dealer in such articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the stamps so affixed, less the affixing discount, upon condition that the seller in this state makes affidavit that the articles were sold and shipped outside of the state and that he has received from the purchaser outside the state a written acknowledgment that he has received such articles with the amount of stamps affixed thereto, together with the name and address of such purchaser. The department of revenue may redeem any unused stamps purchased from it at the face value thereof less the affixing discount. A distributor or wholesaler that has lawfully affixed stamps to cigarettes, and subsequently is unable to sell those cigarettes lawfully because the cigarettes are removed from the directory created pursuant to section 3(2) of this act, may apply to the department for a refund of the cost of the stamps.

NEW SECTION. Sec. 12. Sections 1 through 8 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 13. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the House March 17, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 26

[Senate Bill 5570]

COMMUNICATION WITH A MINOR—IMMORAL PURPOSES

AN ACT Relating to communication with a minor for immoral purposes; and amending RCW 9.68A.090.

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

Sec. 1. RCW 9.68A.090 and 1989 c 32 s 7 are each amended to read as follows:

A person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor, unless that person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW.

Passed by the Senate March 7, 2003.
 Passed by the House April 8, 2003.
 Approved by the Governor April 16, 2003.
 Filed in Office of Secretary of State April 16, 2003.

CHAPTER 27

[Senate Bill 5574]

DISTRICT COURT JURISDICTION

AN ACT Relating to district court jurisdiction over actions involving commercial electronic mail; and amending RCW 3.66.020 and 3.66.040.

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

Sec. 1. RCW 3.66.020 and 2000 c 49 s 1 are each amended to read as follows:

If the value of the claim or the amount at issue does not exceed 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 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; and
- (10) Actions arising under the provisions of chapter 19.190 RCW.

Sec. 2. RCW 3.66.040 and 2001 c 45 s 1 are each amended to read as follows:

(1) An action arising under RCW 3.66.020 (1), (4), (6), (7), and (9) may be brought in any district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed or in which the defendant, or if there be more than one defendant, where some one of the defendants may be served with the notice and complaint in which latter case, however, the district where the defendant or defendants is or are served must be within the county in which the defendant or defendants

reside. If the residence of the defendant is not ascertained by reasonable efforts, the action may be brought in the district in which the defendant's place of actual physical employment is located.

(2) An action arising under RCW 3.66.020(2) for the recovery of possession of personal property and RCW 3.66.020(8) shall be brought in the district in which the subject matter of the action or some part thereof is situated.

(3) An action arising under RCW 3.66.020 (3) and (5) shall be brought in the district in which the cause of action, or some part thereof arose.

(4) An action arising under RCW 3.66.020(2) for the recovery of damages for injuries to the person or for injury to personal property may be brought, at the plaintiff's option, either in the district in which the cause of action, or some part thereof, arose, or in the district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed.

(5) An action against a nonresident of this state, including an action arising under the provisions of chapter 19.190 RCW, may be brought in any district where service of process may be had, or in which the cause of action or some part thereof arose, or in which the plaintiff or one of them resides.

(6) An action upon the unlawful issuance of a check or draft may be brought in any district in which the defendant resides or may be brought in any district in which the check was issued or presented as payment.

(7) For the purposes of chapters 3.30 through 3.74 RCW, the residence of a corporation defendant shall be deemed to be in any district where the corporation transacts business or has an office for the transaction of business or transacted business at the time the cause of action arose or where any person resides upon whom process may be served upon the corporation, unless herein otherwise provided.

Passed by the Senate March 11, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 16, 2003.

Filed in Office of Secretary of State April 16, 2003.

CHAPTER 28

[Senate Bill 5076]

HIGHEST RESPONSIBLE BIDDER—AQUATIC LANDS

AN ACT Relating to the highest responsible bidder for sales of valuable materials from state-owned aquatic lands; and amending RCW 79.90.215.

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

Sec. 1. RCW 79.90.215 and 1990 c 163 s 2 are each amended to read as follows:

(1) To determine the "highest responsible bidder" under RCW 79.90.210, the department of natural resources shall be entitled to consider, in addition to price, the following:

- (a) The financial and technical ability of the bidder to perform the contract;
- (b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;

~~((e))~~ (f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

~~((f))~~ (g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.90.240.

Passed by the Senate March 17, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 29

[Substitute Senate Bill 5088]

TACOMA SCHOOLS—LAND USE

AN ACT Relating to certain lands in Tacoma used for school and playground purposes; amending 1907 c 123 s 2 (uncodified); creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that in 1907, by legislative enactment, the state of Washington dedicated certain lands within the city of Tacoma for street, park, and boulevard purposes, and provided that the interest would revert to the state in the event the lands were used for other purposes. The legislature further finds that a portion of such lands is adjacent to Jefferson elementary school, and that Tacoma public schools, by permission from the city of Tacoma, has utilized these lands for park and playground purposes in conjunction with the operation of the school. The legislature further finds that Tacoma public schools plan to renovate the elementary school, and that the renovation will result in a small portion of the footprint of the school buildings being located on the above-mentioned lands dedicated by the state to the city of Tacoma. The legislature finds that the renovation and uses of the lands dedicated to the city of Tacoma will include within the project public access and recreational use of the elementary school playgrounds. Therefore, the legislature finds that it is appropriate that this act allow an additional dedicated use of these lands.

Sec. 2. 1907 c 123 s 2 (uncodified) is amended to read as follows:

That the following described lands, as shown in the amended map of second school land addition to the city of Tacoma, to-wit: Blocks 280, 279, 278, 277, 276, 275, 274 and 273, being a part of school section 36, township 21 north, range 2 east, W. M., Pierce county, Washington, be and the same are hereby dedicated to the city of Tacoma, a municipal corporation of the State of Washington, to be used for street, park and boulevard purposes, and on block 279, for the additional purpose of the expansion of public school facilities: PROVIDED, HOWEVER, That if the said city of Tacoma shall ever use or permit the use of said lands for any purpose other than in this act provided, the same shall at once revert to the State of Washington without any suit or action in any court and without any action on the part of the State whatsoever; and PROVIDED, FURTHER, That as one of the conditions of this grant, it is expressly provided, that if the streets, or any portion of the streets, bordering on said blocks described in this section be vacated by said city, said blocks in this section dedicated shall at once revert to the State of Washington without the act of any court or courts whatsoever and without any act on the part of the State of Washington.

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 by the Senate February 14, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 30

[Senate Bill 5090]

FIRE FIGHTERS OR LAW ENFORCEMENT OFFICERS—PENSION BOARDS

AN ACT Relating to determining which fire fighters or law enforcement officers may elect or be elected to certain pension and disability boards; and amending RCW 41.16.010, 41.16.020, and 41.26.110.

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

Sec. 1. RCW 41.16.010 and 1973 1st ex.s. c 154 s 61 are each amended to read as follows:

For the purpose of this chapter, unless clearly indicated by the context, words and phrases shall have the following meaning:

(1) "Beneficiary" shall mean any person or persons designated by a fireman in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased fireman under this chapter.

(2) "Board" shall mean the municipal firemen's pension board.

(3) "Child or children" shall mean a child or children unmarried and under eighteen years of age.

(4) "Contributions" shall mean and include all sums deducted from the salary of firemen and paid into the fund as hereinafter provided.

(5) "Disability" shall mean and include injuries or sickness sustained as a result of the performance of duty.

(6) "Fireman" or "fire fighter" shall mean any person regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, who has passed a civil service examination for fireman and who is actively employed as a fireman; and shall include any "prior fireman".

(7) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firemen of the municipality.

(8) "Fund" shall mean the firemen's pension fund created herein.

(9) "Municipality" shall mean every city and town having a regularly organized full time, paid, fire department employing firemen.

(10) "Performance of duty" shall mean the performance of work and labor regularly required of firemen and shall include services of an emergency nature rendered while off regular duty, but shall not include time spent in traveling to work before answering roll call or traveling from work after dismissal at roll call.

(11) "Prior fireman" shall mean a fireman who was actively employed as a fireman of a fire department prior to the first day of January, 1947, and who continues such employment thereafter.

(12) "Retired fireman" shall mean and include a person employed as a fireman and retired under the provisions of chapter 50, Laws of 1909, as amended.

(13) "Widow or widower" means the surviving wife or husband of a retired fireman who was retired on account of length of service and who was lawfully married to such fireman; and whenever that term is used with reference to the wife or former wife or husband or former husband of a retired fireman who was retired because of disability, it shall mean his or her lawfully married wife or husband on the date he or she sustained the injury or contracted the illness that resulted in his or her disability. Said term shall not mean or include a surviving wife or husband who by process of law within one year prior to the retired fireman's death, collected or attempted to collect from him or her funds for the support of herself or himself or for his or her children.

Sec. 2. RCW 41.16.020 and 1988 c 164 s 2 are each amended to read as follows:

There is hereby created in each city and town a municipal firemen's pension board to consist of the following five members, ex officio, the mayor, or in a city of the first class, the mayor or ~~((his))~~ a designated representative who shall be an elected official of the city, who shall be chairman of the board, the city comptroller or clerk, the chairman of finance of the city council, or if there is no chairman of finance, the city treasurer, and in addition, two regularly employed or retired ~~((firemen))~~ fire fighters elected by secret ballot of ~~((the))~~ those employed and retired ~~((firemen. Retired members who are subject to the jurisdiction of the pension board have both the right to elect and the right to be elected under this section))~~ fire fighters who are subject to the jurisdiction of the board. The members to be elected by the ~~((firemen))~~ fire fighters shall be elected annually for a two year term. The two ~~((firemen))~~ fire fighters elected as members shall, in turn, select a third eligible member who shall serve as an alternate in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the ~~((firemen))~~ fire fighters or retired members, the members shall in the same manner elect a successor to serve ~~((his))~~ the unexpired term. The board may select and appoint a secretary

who may, but need not be a member of the board. In case of absence or inability of the chairman to act, the board may select a chairman pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairman. A majority of the members of ~~((said))~~ the board shall constitute a quorum and have power to transact business.

Sec. 3. RCW 41.26.110 and 2000 c 234 s 1 are each amended to read as follows:

(1) All claims for disability shall be acted upon and either approved or disapproved by either type of disability board (~~(hereafter))~~ authorized to be created in this section.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by ~~((said))~~ those cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor~~((;))~~; one active or retired fire fighter employed by or retired from the city to be elected by the fire fighters employed by or retired from the city~~((;))~~ who are subject to the jurisdiction of the board; one active or retired law enforcement officer employed by or retired from the city to be elected by the law enforcement officers employed by or retired from the city who are subject to the jurisdiction of the board; and one member from the public at large who resides within the city to be appointed by the other four members ~~((heretofore))~~ designated in this subsection. ~~((Retired members who are subject to the jurisdiction of the board have both the right to elect and the right to be elected under this section.))~~ Only those active or retired fire fighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All fire fighters and law enforcement officers employed by or retired from the city are eligible for election. Each of the elected members shall serve a two year term. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing firemen's pension boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon and approve or disapprove claims for disability by fire fighters or law enforcement officers as provided under the Washington law enforcement officers' and fire fighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members residing in the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body~~((;))~~; one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to subsection (1)(a) of this section to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board~~((;))~~; one active fire fighter or retired fire fighter employed by or retired from the county to be elected by the fire fighters employed or retired in the county who are not employed by or retired from a city in which a disability board is established~~((;))~~ and who are subject to the jurisdiction of the board; one law enforcement officer or retired law enforcement officer employed by or retired from the county to be elected by

the law enforcement officers employed in or retired from the county who are not employed by or retired from a city in which a disability board is established(;) and who are subject to the jurisdiction of the board; and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four members (~~(heretofore)~~) designated in this subsection. However, in counties with a population less than sixty thousand, the member of the disability board appointed by a majority of the mayors of the cities and towns within the county that do not contain a city disability board must be a resident of one of the cities and towns but need not be a member of a city or town legislative body. (~~(Retired members who are subject to the jurisdiction of the board have both the right to elect and the right to be elected under this section.)~~) Only those active or retired fire fighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All fire fighters and law enforcement officers employed by or retired from the county are eligible for election. All members appointed or elected pursuant to this subsection shall serve for two year terms.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but (~~(said)~~) the members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter.

Passed by the Senate March 6, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 31

[Senate Bill 5096]

TEACHERS RETIREMENT SYSTEMS—EXTENDED SCHOOL YEARS

AN ACT Relating to allowing members of the teachers' retirement system plan 1 to use extended school years for calculation of their earnable compensation; and amending RCW 41.32.010.

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

Sec. 1. RCW 41.32.010 and 1997 c 254 s 3 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(10)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

~~((iii))~~ (iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

~~((iv))~~ (v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iv) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(v) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(viii) The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or

more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(40) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(41) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(43) "Index B" means the index for the year prior to index A.

(44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(45) "Adjustment ratio" means the value of index A divided by index B.

(46) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer.

(49) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

Passed by the Senate February 18, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 32

[Senate Bill 5100]

SURVIVOR BENEFITS—CONFORMITY TO FEDERAL LAW

AN ACT Relating to paying survivor benefits in accordance with Title 26 U.S.C. Sec. 101(h) as amended by the Fallen Hero Survivor Benefit Fairness Act of 2001; and adding a new section to chapter 41.04 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 41.04 RCW to read as follows:

Retirement benefits paid under chapter 41.26, 41.40, or 43.43 RCW to beneficiaries of public safety officers who die in the line of duty shall be paid in accordance with Title 26 U.S.C. Sec. 101(h) as amended by the Fallen Hero Survivor Benefit Fairness Act of 2001.

Passed by the Senate February 21, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 33

[Substitute Senate Bill 5117]

AIR BAGS

AN ACT Relating to sale, distribution, or installation of air bags; amending RCW 46.63.020; adding new sections to chapter 46.37 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.37 RCW to read as follows:

(1) "Air bag" means an inflatable restraint system or portion of an inflatable restraint system installed in a motor vehicle.

(2) "Previously deployed air bag" means an inflatable restraint system or portion of the system that has been activated or inflated as a result of a collision or other incident involving the vehicle.

(3) "Nondeployed salvage air bag" means an inflatable restraint system that has not been previously activated or inflated as a result of a collision or other incident involving the vehicle.

NEW SECTION. **Sec. 2.** A new section is added to chapter 46.37 RCW to read as follows:

(1) A person is guilty of a gross misdemeanor if he or she knew or reasonably should have known that an air bag he or she installs or reinstalls in a vehicle for compensation, or distributes as an auto part, is a previously deployed air bag that is part of an inflatable restraint system.

(2) A person found guilty under subsection (1) of this section shall be punished by a fine of not more than five thousand dollars or by confinement in the county jail for not more than one year, or both.

NEW SECTION. **Sec. 3.** A new section is added to chapter 46.37 RCW to read as follows:

Whenever an air bag that is part of a previously deployed inflatable restraint system is replaced by either a new air bag that is part of an inflatable restraint system or a nondeployed salvage air bag that is part of an inflatable restraint system, the air bag must conform to the original equipment manufacturer requirements and the installer must verify that the self-diagnostic system for the inflatable restraint system indicates that the entire inflatable restraint system is operating properly.

Sec. 4. RCW 46.63.020 and 2001 c 325 s 4 are each amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(18) RCW 46.25.170 relating to commercial driver's licenses;

(19) Chapter 46.29 RCW relating to financial responsibility;

(20) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(21) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(22) Section 2 of this act relating to the sale, resale, distribution, or installation of a previously deployed air bag;

~~((23))~~ (23) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
~~((23))~~ (24) RCW 46.48.175 relating to the transportation of dangerous articles;

~~((24))~~ (25) RCW 46.52.010 relating to duty on striking an unattended car or other property;

~~((25))~~ (26) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

~~((26))~~ (27) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

~~((27))~~ (28) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

~~((28))~~ (29) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

~~((29))~~ (30) RCW 46.55.035 relating to prohibited practices by tow truck operators;

~~((30))~~ (31) RCW 46.61.015 relating to obedience to police officers, flaggers, or fire fighters;

~~((31))~~ (32) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

~~((32))~~ (33) RCW 46.61.022 relating to failure to stop and give identification to an officer;

~~((33))~~ (34) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

~~((34))~~ (35) RCW 46.61.500 relating to reckless driving;

~~((35))~~ (36) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

~~((36))~~ (37) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

~~((37))~~ (38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

~~((38))~~ (39) RCW 46.61.522 relating to vehicular assault;

~~((39))~~ (40) RCW 46.61.5249 relating to first degree negligent driving;

~~((40))~~ (41) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

~~((41))~~ (42) RCW 46.61.530 relating to racing of vehicles on highways;

~~((42))~~ (43) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

~~((43))~~ (44) RCW 46.61.740 relating to theft of motor vehicle fuel;

~~((44))~~ (45) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

~~((45))~~ (46) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

~~((46))~~ (47) Chapter 46.65 RCW relating to habitual traffic offenders;

~~((47))~~ (48) RCW 46.68.010 relating to false statements made to obtain a refund;

~~((48))~~ (49) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

~~((49))~~ (50) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

~~((50))~~ (51) RCW 46.72A.060 relating to limousine carrier insurance;

~~((51))~~ (52) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

~~((52))~~ (53) RCW 46.72A.080 relating to false advertising by a limousine carrier;

~~((53))~~ (54) Chapter 46.80 RCW relating to motor vehicle wreckers;

~~((54))~~ (55) Chapter 46.82 RCW relating to driver's training schools;

~~((55))~~ (56) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

~~((56))~~ (57) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Passed by the Senate March 16, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 34

[Senate Bill 5122]

TRADEMARK REGISTRATION

AN ACT Relating to trademark registration; amending RCW 19.77.010, 19.77.020, 19.77.050, 19.77.140, 19.77.150, and 19.77.160; adding a new section to chapter 19.77 RCW; and repealing RCW 19.77.110.

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

Sec. 1. RCW 19.77.010 and 1994 c 60 s 6 are each amended to read as follows:

~~((As used in))~~ The definitions in this section apply throughout this chapter~~((:))~~ unless the context clearly requires otherwise.

(1) "Alien" when used with reference to a person means a person who is not a citizen of the United States~~((:))~~.

(2) "Applicant" means the person filing an application for registration of a trademark under this chapter, his or her legal representatives, predecessors, successors, or assigns of record with the secretary of state~~((:))~~.

(3) "Domestic" when used with reference to a person means a person who is a citizen of the United States~~((:))~~.

(4) The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive~~((:))~~.

(5) A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark~~((:))~~.

(6) "Dilution" means the ~~((material reduction of the distinctive quality of a famous mark))~~ lessening of the capacity of a famous mark to identify and distinguish goods or services through use of a mark by another person, regardless of the presence or absence of (a) competition between the ~~((users of the mark))~~ owner of the famous mark and other parties, or (b) likelihood of confusion, mistake, or deception arising from that use~~((:))~~.

(7) "Person" means any individual, firm, partnership, corporation, association, union, or other organization capable of suing and being sued in a court of law.

(8) "Registered mark" means a trademark registered under this chapter.

(9) "Registrant" means the person to whom the registration of a trademark under this chapter is issued, his or her legal representatives, successors, or assigns of record with the secretary of state.

(10) "Trademark" or "mark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him or her and to distinguish them from goods made or sold by others, and any word, name, symbol, or device, or any combination thereof, and any title, designation, slogan, character name, and distinctive feature of radio or television programs, used by a person in the sale or advertising of services to identify the services ~~((of one person and))~~ provided by him or her and to distinguish them from the services of others.

(11) A trademark shall be deemed to be "used" in this state when it is placed in the ordinary course of trade and not merely to reserve a right in a mark in any manner on the goods or their containers, or on tabs or labels affixed thereto, or displayed in connection with such goods, and such goods are sold or otherwise distributed in this state, or when it is used or displayed in the sale or advertising of services rendered in this state.

(12) "Trade name" ~~((shall have the same definition as under RCW 19.80.005(1);))~~ means any name used by a person to identify a business or vocation of such a person.

(13) A mark shall be deemed to be "abandoned":

(a) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for ~~((two))~~ three consecutive years shall be prima facie evidence of abandonment; or

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services or causes the mark to lose its significance as an indication of source or origin. Purchaser motivation shall not be a test for determining abandonment under this subsection.

Sec. 2. RCW 19.77.020 and 1989 c 72 s 2 are each amended to read as follows:

(1) A trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

~~((1))~~ (a) Consists of or comprises immoral, deceptive, or scandalous matter; or

~~((2))~~ (b) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; or

~~((3))~~ (c) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

~~((4))~~ (d) Consists of or comprises the name, portrait, or signature identifying a particular living individual who has not consented in writing to its registration; or

~~((5))~~ Consists of a mark which,

~~(a) when applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them, or~~

~~(b) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or~~

~~(e) is primarily merely a surname: PROVIDED, That nothing in this subsection shall prevent the registration of a trademark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as prima facie evidence that the trademark has become distinctive, as used on or in connection with the applicant's goods or services, proof of substantially exclusive and continuous use thereof as a trademark by the applicant in this state or elsewhere in the United States for the five years next preceding the date of the filing of the application for registration; or~~

~~(6))~~ (e) Consists of or comprises a trademark which so resembles a trademark registered in this state, or a trademark or trade name used in this state by another prior to the date of the applicant's or applicant's predecessor's first use in this state and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) Registration under this title does not constitute prima facie evidence that a mark is not merely descriptive, deceptively misdescriptive, or geographically descriptive or deceptively misdescriptive of the goods or services with which it is used, or is not primarily merely a surname, unless the applicant has made substantially exclusive and continuous use thereof as a trademark in this state or elsewhere in the United States for the five years next preceding the date of the filing of the application for registration.

(3) A trade name is not registrable under this chapter. However, if a trade name also functions as a trademark, it is registrable as a trademark.

(4) The secretary of state shall make a determination of registerability by considering the application record and the marks previously registered and subsisting under this chapter.

Sec. 3. RCW 19.77.050 and 1994 c 60 s 3 are each amended to read as follows:

Registration of a trademark hereunder shall be effective for a term of ~~((six))~~ five years from the date of registration. Upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state requiring all the allegations of an application for original registration, the registration may be renewed for successive terms of ~~((six))~~ five years as to the goods or services for which the trademark is still in use in this state. A renewal fee as set by rule by the secretary of state, payable to the secretary of state, shall accompany each application for renewal of the registration.

The secretary of state shall notify registrants of trademarks hereunder or their agents for service of record with the secretary of state of the necessity of renewal within the year, but not less than six months, next preceding the expiration of the unexpired original or renewed term by writing to the last known address of the registrants or their agents according to the files of the secretary of state. Neither the secretary of state's failure to notify a registrant nor

the registrant's nonreceipt of a notice under this section shall extend the term of a registration or excuse the registrant's failure to renew a registration.

NEW SECTION. Sec. 4. A new section is added to chapter 19.77 RCW to read as follows:

The secretary of state must adopt by rule a classification of goods and services for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services that fall within multiple classes, the secretary of state may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States patent and trademark office.

Sec. 5. RCW 19.77.140 and 1989 c 72 s 9 are each amended to read as follows:

(1) Subject to the provisions of RCW 19.77.900 any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source or origin of such goods or services; or

(b) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution of goods or services in this state on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive as to the source or origin of such goods or services

shall be liable to a civil action by the registrant for any or all of the remedies provided in RCW 19.77.150, except that under (b) of this subsection the registrant shall not be entitled to recover profits or damages unless the acts have been committed with ~~((knowledge that such imitation is intended to be used))~~ the intent to cause confusion or mistake(;) or to deceive.

(2) In determining whether, under this chapter, there is a likelihood of confusion, mistake, or deception between marks when used in association with goods or services, the court shall consider all relevant factors, including, but not limited to the following:

(a) The similarity or dissimilarity of the marks in their entireties to appearance, sound, meaning, connotation, and commercial impression;

(b) The similarity or dissimilarity of the goods or services and nature of the goods and services;

(c) The similarity or dissimilarity of trade channels;

(d) The conditions under which sales are made and buyers to whom sales are made;

(e) The fame of the marks;

(f) The number and nature of similar marks in use on similar goods or services;

- (g) The nature and extent of any actual confusion;
- (h) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;
- (i) The variety of goods or services on which each of the marks is or is not used;
- (j) The nature and extent of potential confusion, i.e., whether de minimis or substantial;
- (k) Any other established fact probative of the effect of use.

Sec. 6. RCW 19.77.150 and 1989 c 72 s 11 are each amended to read as follows:

Any registrant may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or colorable imitations of a trademark registered under this chapter, and any court of competent jurisdiction may grant an injunction to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such registrant all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale; and such court may also order that any such counterfeits or colorable imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the registrant, to be destroyed. ~~((In exceptional cases the court may award to the prevailing party the costs of the suit including reasonable attorneys' fees.))~~ The court, in its discretion, may enter judgment awarding reasonable attorneys' fees and/or an amount not to exceed three times such profits and damages in such cases where the court finds the other party committed the wrongful acts in bad faith or otherwise as according to the circumstances of the case.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

Sec. 7. RCW 19.77.160 and 1989 c 72 s 10 are each amended to read as follows:

(1) The owner of a ~~((famous))~~ mark that is famous in this state shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in this state of a mark, commencing after the mark becomes famous, which causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous and has distinctive quality, a court shall consider all relevant factors, including, but not limited to the following:

~~((1) Whether the mark is inherently distinctive or has become distinctive through substantially exclusive and continuous use))~~ (a) The degree or inherent or acquired distinctiveness of the mark in this state;

~~((2) Whether))~~ (b) The duration and extent of use of the mark ((are substantial)) in connection with the goods or services with which the mark is used;

~~((3) Whether))~~ (c) The duration and extent of advertising and publicity of the mark ((are substantial)) in this state;

~~((4) Whether))~~ (d) The geographical extent of the trading area in which the mark is used ((is substantial));

~~((5) Whether the mark has substantial renown in its and in the other person's trading areas and channels of trade; and~~

~~(6) Whether substantial use of the same or similar marks is being made by third parties)) (e) The channels of trade for the goods or services with which the mark is used;~~

(f) The degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;

(g) The nature and extent of use of the same or similar marks by third parties; and

(h) Whether the mark is the subject of state registration in this state or United States registration.

(2) The owner shall be entitled only to injunctive relief in an action brought under this section, unless the subsequent user willfully intended to trade on the ~~((registrant's))~~ owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(3) The following are not actionable under this section:

(a) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify competing goods or services of the owner of the famous mark;

(b) Noncommercial use of a famous mark; and

(c) All forms of reporting and news commentary.

NEW SECTION. Sec. 8. RCW 19.77.110 (Classification of goods) and 1989 c 72 s 7 & 1955 c 211 s 11 are each repealed.

Passed by the Senate February 21, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 35

[Senate Bill 5123]

BUSINESS CORPORATION ACT

AN ACT Relating to the Washington business corporation act; amending RCW 23B.07.260, 23B.10.020, 23B.10.030, 23B.10.040, 23B.11.030, 23B.12.020, 23B.13.020, and 23B.14.020; adding a new section to chapter 23B.01 RCW; and adding a new section to chapter 23B.11 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 23B.01 RCW to read as follows:

(1) A corporation has provided notice or any other record to shareholders of record who share a common address if all of the following requirements are met:

(a) The corporation delivers the notice or other record to the common address;

(b) The corporation addresses the notice or other record to the shareholders who share that address either as a group or to each of the shareholders individually; and

(c) Each shareholder consents in a record to delivery of a single copy of such a notice or other record to the shareholders' common address, and the corporation notifies each shareholder of the duration of that shareholder's consent, and explains the manner by which the shareholder can revoke the consent.

(2) For purposes of this section, "address" means a street address, a post office box number, a facsimile telephone number, a common address, location, or system for electronic transmissions, or another similar destination to which records are delivered.

(3) If a shareholder revokes consent to delivery of a single copy of any notice or other record to a common address, or notifies the corporation that the shareholder wishes to receive an individual copy of any notice or other record, the corporation shall begin sending individual copies to that shareholder within thirty days after the corporation receives the revocation of consent or notice.

(4) Prior to the delivery of notice by electronic transmission to a common address, location, or system for electronic transmissions under this section, each shareholder consenting to receive notice under this section must also have consented to the receipt of notices by electronic transmission as provided in RCW 23B.01.410.

Sec. 2. RCW 23B.07.260 and 1989 c 165 s 74 are each amended to read as follows:

(1) If the articles of incorporation or this title provide for voting ~~((by))~~ on a matter by all shares entitled to vote thereon, voting together as a single voting group ((on a matter)) and do not provide for separate voting by any other voting group or groups with respect to that matter, action on that matter is taken when voted upon by that single voting group as provided in RCW 23B.07.250.

(2) If the articles of incorporation or this title provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups ~~((counted separately))~~ as provided in RCW 23B.07.250. ~~((Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.))~~

Sec. 3. RCW 23B.10.020 and 1989 c 165 s 121 are each amended to read as follows:

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) If the corporation has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) If the corporation has only one class of shares outstanding, solely to:

(a) Effect a forward split of, or change the number of authorized shares of that class in proportion to ((effectuate)) a forward split of, or stock dividend in, the corporation's ((own)) outstanding shares((, or solely to do so and to change the number of authorized shares in proportion thereto)), or

(b) Effect a reverse split of the corporation's outstanding shares and the number of authorized shares of that class in the same proportions;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder action.

Sec. 4. RCW 23B.10.030 and 1989 c 165 s 122 are each amended to read as follows:

(1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed amendment.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) ~~((Unless this title, the articles of incorporation, or))~~ In addition to any other voting conditions imposed by the board of directors~~((, acting pursuant to))~~ under subsection (3) of this section, ((require a greater vote or a vote by voting groups.)) the amendment to be adopted must be approved ~~((by each voting group entitled to vote thereon))~~ by two-thirds, or, in the case of a public company, a majority, of the voting group comprising all the votes entitled to be cast ((by that voting group)) on the proposed amendment, and of each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this subsection. The articles of incorporation of a corporation other than a public company may ((provide for)) require a lesser vote than that provided for in this subsection, or ((for)) may require a lesser vote by separate voting groups, so long as the required vote ((provided for each voting group entitled to vote separately on the amendment)) is not less than a majority of all the votes entitled to be cast on the proposed amendment ((by that voting group)) and of each other voting group entitled to vote separately on the proposed amendment. Separate voting by additional voting groups is required on a proposed amendment under the circumstances described in RCW 23B.10.040.

Sec. 5. RCW 23B.10.040 and 1989 c 165 s 123 are each amended to read as follows:

(1) Except as otherwise required by subsection (3) of this section or otherwise permitted by subsection (4) of this section, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group(;) on a proposed amendment if shareholder voting is otherwise required by this title(, on a proposed amendment) and if the amendment would:

(a) Increase ~~((or decrease))~~ the aggregate number of authorized shares of the class or series;

(b) Effect an exchange or reclassification of all or part of the issued and outstanding shares of the class or series into shares of another class or series, thereby adversely affecting the holders of the shares so exchanged or reclassified;

~~((Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;~~

~~((d))~~ Change the ~~((designation,))~~ rights, preferences, or limitations of all or part of the issued and outstanding shares of the class or series, thereby adversely affecting the holders of shares of the class or series;

~~((e))~~ ~~((d))~~ Change ~~((the shares of))~~ all or part of the issued and outstanding shares of the class or series into a different number of shares of the same class or series, thereby adversely affecting the holders of shares of the class or series;

~~((f))~~ ~~((e))~~ Create a new class or series of shares having rights or preferences with respect to distributions or to dissolution that are, or upon designation by the board of directors in accordance with RCW 23B.06.020 may be, prior, superior, or substantially equal to the shares of the class or series;

~~((g))~~ ~~((f))~~ Increase the rights(;) or preferences with respect to distributions or to dissolution, or the number of authorized shares of any class or series that, after giving effect to the amendment, ((have)) has rights or preferences with respect to distributions or to dissolution that are, or upon designation by the board of directors in accordance with RCW 23B.06.020 may be, prior, superior, or substantially equal to the shares of the class or series;

~~((h))~~ ~~((g))~~ Limit or deny an existing preemptive right of all or part of the shares of the class or series; ~~((or~~

~~((i))~~ ~~((h))~~ Cancel or otherwise adversely affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class or series; or

~~((j))~~ ~~((i))~~ Effect a redemption or cancellation of all or part of the shares of the class or series in exchange for cash or any other form of consideration other than shares of the corporation.

(2) If a proposed amendment would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed amendment. A voting group entitled to vote separately under this section may never comprise a group of holders smaller than the holders of a single class or series authorized and designated as a class or series in the articles of incorporation, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed amendment on a separate vote by one or more smaller voting groups.

(3) If a proposed amendment, that ~~((entitles))~~ would otherwise entitle two or more classes or series of shares ((within a class)) to vote as separate voting groups under this section, would affect those two or more classes or series in the

same or a substantially similar way, then instead of voting as separate voting groups the shares of all ((the)) similarly affected classes or series ((within the class so affected must)) shall vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed amendment on a separate vote by one or more classes or series.

(4) A class or series of shares is entitled to the voting group rights granted by this section although the articles of incorporation (~~(provide that))~~ generally describe the shares ((are)) of the class or series as nonvoting shares. The articles of incorporation may, however, limit or deny the voting group rights granted by subsection (1)(a), (e), or (f) of this section as to any class or series of issued or unissued shares, by means of a provision that makes explicit reference to the limitation or denial of voting group rights that would otherwise apply under subsection (1)(a), (e), or (f) of this section.

Sec. 6. RCW 23B.11.030 and 1989 c 165 s 133 are each amended to read as follows:

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) ~~((Unless this title, the articles of incorporation, or))~~ In addition to any other voting conditions imposed by the board of directors((, acting pursuant to)) under subsection (3) of this section, ((require a greater vote or a vote by voting groups;)) the plan of merger to be authorized must be approved by ((each voting group entitled to vote separately on the plan by)) two-thirds of the voting group comprising all the votes entitled to be cast on the plan ((by that voting group)), and of each other voting group entitled under section 7 of this act or the articles of incorporation to vote separately on the plan, unless shareholder action is not required under subsection (7) of this section. The articles of incorporation may ~~((provide for a))~~ require a greater or lesser vote than that provided in this

subsection, or ~~((for))~~ a greater or lesser vote by separate voting groups, so long as the required vote ~~((provided for each voting group entitled to vote separately on the plan of merger))~~ is not less than a majority of all the votes entitled to be cast on the plan of merger ~~((by that voting group))~~ and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of merger ~~((if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under RCW 23B.10.040))~~ under the circumstances described in section 7 of this act.

(6) ~~((Unless this title, the articles of incorporation, or))~~ In addition to any other voting conditions imposed by the board of directors ((, acting pursuant to)) under subsection (3) of this section, ~~((require a greater vote or a vote by voting groups;))~~ the plan of share exchange to be authorized must be approved by ~~((each voting group entitled to vote separately on the plan by))~~ two-thirds of the voting group comprising all the votes entitled to be cast on the plan ((by that voting group)), and of each other voting group entitled under section 7 of this act or the articles of incorporation to vote separately on the plan. The articles of incorporation may ~~((provide for a))~~ require a greater or lesser vote than that provided in this subsection, or ~~((for))~~ a greater or lesser vote by separate voting groups, so long as the required vote ~~((provided for each voting group entitled to vote separately on the plan of share exchange))~~ is not less than a majority of all the votes entitled to be cast on the plan of share exchange ~~((by that voting group))~~ and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange ~~((by each class or series of shares included in the exchange, with each class or series constituting a separate voting group))~~ under the circumstances described in section 7 of this act.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

NEW SECTION. Sec. 7. A new section is added to chapter 23B.11 RCW to read as follows:

(1) Except as otherwise required by subsection (3) of this section or otherwise permitted by subsection (4) of this section, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group on a proposed plan of merger or plan of share exchange if shareholder voting is otherwise required by this title and if, as a result of the proposed plan, holders of part or all of the class or series would hold or receive:

(a) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and either (i) that class or series has a greater number of authorized shares than the class or series held by the holders prior to the merger or share exchange, or (ii) the proposed plan effects a change in the number of shares held by the holders, or in the rights, preferences, or limitations of the shares they hold, or in the class or series of shares they hold, and such change adversely affects the holders;

(b) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and the holders who hold or receive shares of that class or series are adversely affected under the proposed plan, as compared to their circumstances prior to the proposed merger or share exchange, by the creation, existence, number of authorized shares, or rights or preferences with respect to distributions or to dissolution, of another class or series of shares of the surviving, acquiring, or parent corporation having rights or preferences with respect to distributions or to dissolution that are, or upon designation by the surviving, acquiring, or parent corporation's board of directors may be, prior, superior, or substantially equal to the shares of the class or series held or to be received by the holders in the proposed merger or share exchange; or

(c) Cash or any other form of consideration other than shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, received upon redemption or cancellation of all or part of their shares pursuant to the proposed plan of merger or share exchange.

(2) If a proposed plan of merger or share exchange would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed plan. A voting group entitled to vote separately under this section may never comprise a group of holders smaller than the holders of a single class or series authorized and designated as a class or series in the articles of incorporation, unless otherwise provided in the articles of

incorporation or unless the board of directors conditions its submission of the proposed plan on a separate vote by one or more smaller voting groups.

(3) If a proposed plan of merger or share exchange, that would otherwise entitle two or more classes or series of shares to vote as separate voting groups under this section, would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups, the shares of all similarly affected classes or series shall vote together as a single voting group on the proposed plan of merger or share exchange, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series. Holders of shares of two or more classes or series of shares who will, under a proposed plan, receive the same type of consideration in the form of shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, cash or other form of consideration, or the same combination thereof, but in differing amounts resulting solely from application of provisions in the corporation's articles of incorporation governing distribution of consideration received in a merger or share exchange, are affected in the same or a substantially similar way and are not, by reason of receiving the same types or differing amounts of consideration, entitled to vote as separate voting groups on the proposed plan, unless the articles of incorporation expressly require otherwise or the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series.

(4) A class or series of shares is entitled to the voting group rights granted by this section although the articles of incorporation generally describe the shares of the class or series as nonvoting shares. The articles of incorporation may, however, limit or deny the voting group rights granted by this section as to any class or series of issued or unissued shares, by means of a provision that makes explicit reference to the limitation or denial of voting group rights that would otherwise apply under this section.

Sec. 8. RCW 23B.12.020 and 1989 c 165 s 139 are each amended to read as follows:

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed transaction.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) ~~((Unless the articles of incorporation or))~~ In addition to any other voting conditions imposed by the board of directors~~((, acting pursuant to))~~ under subsection (3) of this section, ~~((require a greater vote or a vote by voting groups;))~~ the transaction to be authorized must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the transaction, and of each other voting group entitled under the articles of incorporation to vote separately on the transaction. The articles of incorporation may ~~((provide for a))~~ require a greater or lesser vote than ~~((that))~~ provided ~~((for))~~ in this subsection, or ~~((for))~~ a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote ~~((provided for each voting group entitled to vote separately on the transaction))~~ is not less than a majority of all the votes entitled to be cast on the transaction ~~((by that voting group))~~ and of each other voting group entitled to vote separately on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action, in a manner determined by the board of directors.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section.

Sec. 9. RCW 23B.13.020 and 1991 c 269 s 37 are each amended to read as follows:

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder is entitled to vote on the merger, or (ii) if the corporation is a subsidiary that is merged with its parent under RCW 23B.11.040;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation ~~((that materially reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under RCW 23B.06.040)),~~ whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares

in exchange for cash or other consideration other than shares of the corporation;
or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.900 through 25.10.955, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

Sec. 10. RCW 23B.14.020 and 1989 c 165 s 155 are each amended to read as follows:

(1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed dissolution.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) ~~((Unless the articles of incorporation or))~~ In addition to any other voting conditions imposed by the board of directors~~((, acting pursuant to))~~ under subsection (3) of this section, ~~((require a greater vote or a vote by voting groups;))~~ the proposal to dissolve must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on ~~((that))~~ the proposal ~~((in order to be adopted)), and of each other voting group entitled under the articles of incorporation to vote separately on the proposal. The articles of incorporation may ~~((provide for a))~~ require a greater or lesser vote than ~~((that))~~ provided ~~((for))~~ in this subsection, or ~~((for))~~ a greater or lesser vote by any separate voting~~

groups provided for in the articles of incorporation, so long as the required vote ((provided for each voting group entitled to vote separately on the proposal to dissolve)) is not less than a majority of all the votes entitled to be cast on the proposal ((by that voting group)) and of each other voting group entitled to vote separately on the proposal.

Passed by the Senate March 6, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 36

[Engrossed Substitute Senate Bill 5142]

SCHOOL DISTRICT ENROLLMENT—SCHOOL EMPLOYEES

AN ACT Relating to permitting children of certificated and classified school employees to enroll at the school where the employee is assigned; amending RCW 28A.225.225 and 28A.225.270; and adding a new section to chapter 28A.320 RCW.

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

Sec. 1. RCW 28A.225.225 and 1999 c 198 s 2 are each amended to read as follows:

(1) Except for students who reside out-of-state, a district shall accept applications from nonresident students who are the children of full-time certificated and classified school employees, and those children shall be permitted to enroll:

(a) At the school to which the employee is assigned; or

(b) At a school forming the district's K through 12 continuum which includes the school to which the employee is assigned.

(2) A district may reject applications under this section if:

(a) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership;

(b) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (2)(b) must apply uniformly to both resident and nonresident applicants; or

(c) Enrollment of a child under this section would displace a child who is a resident of the district, except that if a child is admitted under subsection (1) of this section, that child shall be permitted to remain enrolled at that school, or in that district's kindergarten through twelfth grade continuum, until he or she has completed his or her schooling.

(3) Except as provided in subsection (1) of this section, all districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of a nonresident student if:

(a) Acceptance of a nonresident student would result in the district experiencing a financial hardship;

(b) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership; or

(c) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection ~~((4))~~ (3)(c) must apply uniformly to both resident and nonresident applicants.

For purposes of subsections ~~((4))~~ (2)(a) and (3)(b) of this section, "gang" means a group which: (i) Consists of three or more persons; (ii) has identifiable leadership; and (iii) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

~~((2))~~ (4) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3).

Sec. 2. RCW 28A.225.270 and 1990 1st ex.s. c 9 s 205 are each amended to read as follows:

(1) Each school district in the state shall adopt and implement a policy allowing intradistrict enrollment options no later than June 30, 1990. Each district shall establish its own policy establishing standards on how the intradistrict enrollment options will be implemented.

(2) A district shall permit the children of full-time certificated and classified school employees to enroll at:

(a) The school to which the employee is assigned; or

(b) A school forming the district's K through 12 continuum which includes the school to which the employee is assigned.

(3) For the purposes of this section, "full-time employees" means employees who are employed for the full number of hours and days for their job description.

***NEW SECTION.** Sec. 3. *A new section is added to chapter 28A.320 RCW to read as follows:*

Each school district shall report to the superintendent of public instruction the number of students that apply for enrollment under RCW 28A.225.225(1) or 28A.225.270(2) and the number of total students applying for transfers that were denied enrollment. The superintendent of public instruction shall compile the data and report it to the legislature by December 1, 2004.

*Sec. 3 was vetoed. See message at end of chapter.

Passed by the Senate March 11, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 17, 2003.

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

"I am returning herewith, without my approval as to section 3, Engrossed Substitute Senate Bill No. 5142 entitled:

"AN ACT Relating to permitting children of certificated and classified school employees to enroll at the school where the employee is assigned;"

This bill requires, upon application, that school districts enroll children of their certificated and classified school employees in the school to which the employee is assigned, or to one of the schools in the feeder school system for the school to which the employee is assigned.

Section 3 of this bill would have provided for certain reporting requirements. The veto of this section has been requested by the Superintendent of Public Instruction, and has the concurrence of the bill sponsor and the sponsor of the Section 3 amendment. Nonetheless, I understand that the Superintendent of Public Instruction intends to provide information regarding the provisions of this bill to the legislature by means of a survey. I support this less burdensome approach.

For these reasons, I have vetoed section 3 of Engrossed Substitute Senate Bill No. 5142.

With the exception of section 3, Engrossed Substitute Senate Bill No. 5142 is approved."

CHAPTER 37

[Substitute Senate Bill 5165]

VEHICULAR PURSUITS

AN ACT Relating to vehicular pursuit by law enforcement officers; adding new sections to chapter 43.101 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature intends to improve the safety of law enforcement officers and the public by providing consistent education and training for officers in the matter of vehicle pursuit. The legislature recognizes there are a multitude of factors which enter into the determination of pursuit and intends that the criminal justice training commission be given the responsibility of identifying those factors and developing appropriate standards for training of law enforcement officers in this area.

NEW SECTION. Sec. 2. A new section is added to chapter 43.101 RCW to read as follows:

(1) By December 1, 2003, the Washington state criminal justice training commission, the Washington state patrol, the Washington association of sheriffs and police chiefs, and organizations representing state and local law enforcement officers shall develop a written model policy on vehicular pursuits.

(2) The model policy must meet all of the following minimum standards:

(a) Provide for supervisory control, if available, of the pursuit;

(b) Provide procedures for designating the primary pursuit vehicle and for determining the total number of vehicles to be permitted to participate at one time in the pursuit;

(c) Provide procedures for coordinating operations with other jurisdictions; and

(d) Provide guidelines for determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.

(3) By June 1, 2004, every state, county, and municipal law enforcement agency shall adopt and implement a written vehicular pursuit policy. The policy adopted may, but need not, be the model policy developed under subsections (1) and (2) of this section. However, any policy adopted must address the minimum requirements specified in subsection (2) of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 43.101 RCW to read as follows:

(1) By June 30, 2006, every new full-time law enforcement officer employed, after the effective date of this act, by a state, county, or municipal law enforcement agency shall be trained on vehicular pursuits.

(2) Beginning July 1, 2006, every new full-time law enforcement officer employed by a state, county, or municipal law enforcement agency shall be trained on vehicular pursuits, within six months of employment.

(3) Nothing in this act requires training on vehicular pursuit of any law enforcement officer who is employed in a state, county, or city law enforcement agency on the effective date of this act beyond that which he or she has received prior to the effective date of this act.

Passed by the Senate February 18, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 38

[Senate Bill 5167]

SELLERS OF TRAVEL—TRUST ACCOUNTS

AN ACT Relating to sellers of travel; and amending RCW 19.138.140.

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

Sec. 1. RCW 19.138.140 and 1999 c 238 s 6 are each amended to read as follows:

(1) A seller of travel shall deposit in a trust account maintained in a federally insured financial institution located in Washington state, or other account approved by the director, all sums held for more than five business days that are received from a person or entity, for retail travel services offered by the seller of travel. This subsection does not apply to travel services sold by a seller of travel, when payments for the travel services are made through the airlines reporting corporation.

(2) The trust account or other approved account required by this section shall be established and maintained for the benefit of any person or entity paying money to the seller of travel. The seller of travel shall not in any manner encumber the amounts in trust and shall not withdraw money from the account except the following amounts may be withdrawn at any time:

(a) Partial or full payment for travel services to the entity directly providing the travel service;

(b) Refunds as required by this chapter;

(c) The amount of the sales commission;

(d) Interest earned and credited to the trust account or other approved account;

(e) Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided; or

(f) Reimbursement to the seller of travel for agency operating funds that are advanced for a customer's travel services.

(3) The seller of travel may deposit noncustomer funds into the trust account as needed in an amount equal to a deficiency resulting from dishonored

customer payments made by check, draft, credit card, debit card, or other negotiable instrument.

(4) At the time of registration, the seller of travel shall file with the department the account number and the name of the financial institution at which the trust account or other approved account is held as set forth in RCW 19.138.110. The seller of travel shall notify the department of any change in the account number or location within one business day of the change.

(5) The director, by rule, may allow for the use of other types of funds or accounts only if the protection for consumers is no less than that provided by this section.

(6) The seller of travel need not comply with the requirements of this section if all of the following apply, except as exempted in subsection (1) of this section:

(a) The payment is made by credit card;

(b) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek to obtain payment of the credit card charge to any account over which the seller of travel has any control; and

(c) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge, or if the charge is only for services, the provider of services processes the credit card charges.

(7) The seller of travel need not maintain a trust account nor comply with the trust account provisions of this section if the seller of travel:

(a)(i) Files and maintains a surety bond approved by the director in an amount of not less than ten thousand nor more than fifty thousand dollars, as determined by rule by the director based on the gross income of business conducted for Washington state residents by the seller of travel during the prior year. The bond shall be executed by the applicant as obligor by a surety company authorized to transact business in this state naming the state of Washington as obligee for the benefit of any person or persons who have suffered monetary loss by reason of the seller of travel's violation of this chapter or a rule adopted under this chapter. The bond shall be conditioned that the seller of travel will conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse any person or persons who suffer monetary loss by reason of a violation of this chapter or a rule adopted under this chapter.

(ii) The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of the surety's intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director.

(iii) The applicant may obtain the bond directly from the surety or through other bonding arrangement as approved by the director.

(iv) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as is approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(v) Any person or persons who have suffered monetary loss by any act which constitutes a violation of this chapter or a rule adopted under this chapter may bring a civil action in court against the seller of travel and the surety upon such bond or approved alternate security of the seller of travel who committed

the violation of this chapter or a rule adopted under this chapter or who employed the seller of travel who committed such violation. A civil action brought in court pursuant to the provisions of this section must be filed no later than one year following the later of the alleged violation of this chapter or a rule adopted under this chapter or completion of the travel by the customer; or

(b) Is a member in good standing in a professional association, such as the United States tour operators association or national tour association, that is approved by the director and that provides or requires a member to provide a minimum of one million dollars in errors and professional liability insurance and provides a surety bond or equivalent protection in an amount of at least two hundred fifty thousand dollars for its member companies.

(8) If the seller of travel maintains its principal place of business in another state and maintains a trust account or other approved account in that state consistent with the requirement of this section, and if that seller of travel has transacted business within the state of Washington in an amount exceeding five million dollars for the preceding year, the out-of-state trust account or other approved account may be substituted for the in-state account required under this section.

Passed by the Senate March 7, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 39

[Senate Bill 5172]

TECHNICAL CORRECTIONS

AN ACT Relating to making technical corrections to the Revised Code of Washington under the authority of RCW 1.08.025; and amending RCW 3.66.060, 4.24.210, 7.84.020, 7.84.040, 9.41.098, 10.105.900, 15.85.020, 15.85.060, 16.36.005, 17.26.020, 19.27.490, 19.158.020, 34.05.328, 35.21.404, 35.63.230, 35A.21.290, 35A.63.250, 35A.69.010, 36.70.982, 36.70.992, 36.70A.460, 43.21B.005, 43.21C.0382, 43.21C.260, 43.21K.010, 43.52.440, 43.101.010, 69.04.930, 69.04.934, 70.105D.090, 72.63.040, 76.09.030, 76.09.063, 76.09.350, 76.09.910, 76.13.100, 76.42.060, 77.15.310, 78.44.050, 79.76.060, 79.90.150, 79.94.390, 79.96.080, 79A.25.240, 79A.60.010, 82.27.070, 89.08.470, 90.03.247, and 90.58.147.

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

Sec. 1. RCW 3.66.060 and 2000 c 111 s 3 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)) 77 RCW; (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 RCW 2.56.160.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107.

Sec. 2. RCW 4.24.210 and 1997 c 26 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land. Nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(4) For purposes of this section, a license or permit issued for statewide use under authority of chapter ~~((43.51))~~ 79A.05 RCW~~((, Title 75,))~~ or Title 77 RCW is not a fee.

EXPLANATORY NOTE

Chapter 43.51 RCW was recodified as chapter 79A.05 RCW pursuant to 1999 c 249 § 1601.

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107.

Sec. 3. RCW 7.84.020 and 1999 c 249 s 503 are each amended to read as follows:

Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Infraction" means an offense which, by the terms of Title ((75;)) 76, 77, 79, or 79A RCW or chapter 43.30 RCW and rules adopted under these titles and chapters, is declared not to be a criminal offense and is subject to the provisions of this chapter.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107.

Sec. 4. RCW 7.84.040 and 1987 c 380 s 4 are each amended to read as follows:

(1) Infraction proceedings may be heard and determined by a district court.

(2) Infraction proceedings shall be brought in the district court district in which the infraction occurred. If an infraction takes place in the offshore waters, as defined in RCW ((75.08.044)) 77.08.010, the infraction proceeding may be brought in any county bordering on the Pacific Ocean.

EXPLANATORY NOTE

RCW 75.08.011 was repealed by 2000 c 107 § 125. RCW 77.08.010 has the same definition of "offshore waters" that appeared in RCW 75.08.011.

Sec. 5. RCW 9.41.098 and 1996 c 295 s 10 are each amended to read as follows:

(1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) In the possession of a person prohibited from possessing the firearm under RCW 9.41.040 or 9.41.045;

(d) In the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a nonfelony crime in which a firearm was used or displayed;

(e) In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, as defined in chapter 46.61 RCW;

(f) In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a nonfelony crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) In the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Used in the commission of a felony or of a nonfelony crime in which a firearm was used or displayed.

(2) Upon order of forfeiture, the court in its discretion may order destruction of any forfeited firearm. A court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided in (b), (c), and (d) of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade may be retained by the legislative authority. This subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in RCW 9.41.098 that were in effect immediately preceding May 7, 1993; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW (~~77.12.720~~) 79A.25.210. All trades or auctions of firearms under this subsection shall be to licensed dealers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW (~~77.12.720~~) 79A.25.210.

(c) Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department bureau of alcohol, tobacco, and firearms are exempt from destruction and shall be disposed of by auction or trade to licensed dealers.

(d) Firearms in the possession of the Washington state patrol on or after May 7, 1993, that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to licensed dealers. The Washington state patrol may retain any proceeds of an auction or trade.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section.

EXPLANATORY NOTE

RCW 77.12.720 was recodified as RCW 79A.25.210 pursuant to 1999 c 249 § 1601.

Sec. 6. RCW 10.105.900 and 1994 c 218 s 18 are each amended to read as follows:

This chapter does not apply to property subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098, 9.46.231, 9A.82.100, 9A.83.030, 7.48.090, or (~~77.12.101~~) 77.15.070.

EXPLANATORY NOTE

RCW 77.12.101 was repealed by 2000 c 107 § 273. RCW 77.15.070, amended by 2000 c 107 § 231, is now the fish and wildlife forfeiture statute.

Sec. 7. RCW 15.85.020 and 1989 c 176 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) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

Scientific Name	Common Name
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	Sturgeon

Private sector cultured aquatic products do not include herring spawn on kelp and other products harvested under a herring spawn on kelp permit issued in accordance with RCW ((75.28.245)) 77.70.210.

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture.

EXPLANATORY NOTE

RCW 75.28.245 was recodified as RCW 75.30.270 pursuant to 1993 c 340 § 54, effective January 1, 1994. RCW 75.30.270 was subsequently recodified as RCW 77.70.210 pursuant to 2000 c 107 § 132.

Sec. 8. RCW 15.85.060 and 1994 c 264 s 5 are each amended to read as follows:

The director shall establish identification requirements for private sector cultured aquatic products to the extent that identifying the source and quantity of the products is necessary to permit the department of fish and wildlife to administer and enforce (~~Titles 75 and~~) Title 77 RCW effectively. The rules shall apply only to those private sector cultured aquatic products the transportation, sale, processing, or other possession of which would otherwise be required to be licensed under Title (~~(75-06)~~) 77 RCW if they were not cultivated by aquatic farmers. The rules shall apply to the transportation or possession of such products on land other than aquatic lands and may require that they be: (1) Placed in labeled containers or accompanied by bills of lading or sale or similar documents identifying the name and address of the producer of the products and the quantity of the products governed by the documents; or (2) both labeled and accompanied by such documents.

The director shall consult with the director of fish and wildlife to ensure that such rules enable the department of fish and wildlife to enforce the programs administered under those titles. If rules adopted under chapter 69.30 RCW satisfy the identification required under this section for shellfish, the director shall not establish different shellfish identification requirements under this section.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107.

Sec. 9. RCW 16.36.005 and 1998 c 8 s 1 are each amended to read as follows:

As used in this chapter:

"Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean noncaptive wildlife as defined in RCW 77.08.010(16), except as used in RCW 16.36.050(1) and 16.36.080 (1), (2), (3), and (5).

"Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

"Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter (~~(75-58)~~) 77.115 RCW.

"Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate

reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

"Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

"Director" means the director of agriculture of the state of Washington or his or her authorized representative.

"Department" means the department of agriculture of the state of Washington.

"Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

"Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

"Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

"Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

"Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

"Infectious disease" means a clinical disease of ~~((man))~~ humans or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

"Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

"Person" means a person, persons, firm, or corporation.

"Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

"Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

"Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals.

EXPLANATORY NOTE

Chapter 75.58 RCW was recodified as chapter 77.115 RCW by 2000 c 107. The section is also made gender neutral.

Sec. 10. RCW 17.26.020 and 1995 c 255 s 12 are each amended to read as follows:

(1) Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies.

(2) The department of natural resources is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of natural resources.

(3) The department of fish and wildlife is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of fish and wildlife.

(4) The state parks and recreation commission is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the state parks and recreation commission.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this chapter, RCW 90.48.020, 90.58.030, and ~~((75.20.108))~~ 77.55.150:

(a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens*.

(b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum*.

(c) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

EXPLANATORY NOTE

RCW 75.20.108 was recodified as RCW 77.55.150 pursuant to 2000 c 107 § 129.

Sec. 11. RCW 19.27.490 and 1998 c 249 s 14 are each amended to read as follows:

A fish habitat enhancement project meeting the criteria of RCW ~~((75.20.350(1)))~~ 77.55.290(1) is not subject to grading permits, inspections, or fees and shall be reviewed according to the provisions of RCW ~~((75.20.350))~~ 77.55.290.

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 12. RCW 19.158.020 and 1989 c 20 s 3 are each amended to read as follows:

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

(1) A "commercial telephone solicitor" is any person who engages in commercial telephone solicitation, including service bureaus.

(2) "Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services;

(b) Other communication with a person where:

(i) A free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; and

(ii) A telephone call response is invited; and

(iii) The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call;

(c) Other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson;

(d) For purposes of this section, "other communication" means a written or oral notification or advertisement transmitted through any means.

(3) A "commercial telephone solicitor" does not include any of the following:

(a) A person engaging in commercial telephone solicitation where:

(i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or

(ii) Less than sixty percent of such person's prior year's sales were made as a result of a commercial telephone solicitation as defined in this chapter. Where more than sixty percent of a seller's prior year's sales were made as a result of commercial telephone solicitations, the service bureau contracting to provide commercial telephone solicitation services to the seller shall be deemed a commercial telephone solicitor.

(b) A person making calls for religious, charitable, political, or other noncommercial purposes.

(c) A person soliciting business solely from purchasers who have previously purchased from the business enterprise for which the person is calling.

(d) A person soliciting:

(i) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; and

(ii) Who does not make the major sales presentation during the telephone solicitation; and

(iii) Who only makes the major sales presentation or arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser.

(e) A person selling a security which is exempt from registration under RCW 21.20.310;

(f) A person licensed under RCW 18.85.090 when the solicited transaction is governed by that law;

(g) A person registered under RCW 18.27.060 when the solicited transaction is governed by that law;

(h) A person licensed under RCW 48.17.150 when the solicited transaction is governed by that law;

(i) Any person soliciting the sale of a franchise who is registered under RCW 19.100.140;

(j) A person primarily soliciting the sale of a newspaper of general circulation, a magazine or periodical, or contractual plans, including book or record clubs: (i) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise; and (ii) which is regulated by the federal trade commission trade regulation concerning "use of negative option plans by sellers in commerce";

(k) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings banks, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or the United States;

(l) A person soliciting the sale of a prearrangement funeral service contract registered under RCW 18.39.240 and 18.39.260;

(m) A person licensed to enter into prearrangement contracts under RCW 68.05.155 when acting subject to that license;

(n) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit;

(o) A person or affiliate of a person whose business is regulated by the utilities and transportation commission or the federal communications commission;

(p) A person soliciting the sale of agricultural products, as defined in RCW 20.01.010 where the purchaser is a business;

(q) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the securities exchange act of 1934 (15 U.S.C. Sec. 781) and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) of that section;

(r) A commodity broker-dealer as defined in RCW 21.30.010 and registered with the commodity futures trading commission;

(s) A business-to-business sale where:

(i) The purchaser business intends to resell the property or goods purchased, or

(ii) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing or manufacturing process;

(t) A person licensed under RCW 19.16.110 when the solicited transaction is governed by that law;

(u) A person soliciting the sale of food intended for immediate delivery to and immediate consumption by the purchaser;

(v) A person soliciting the sale of food fish or shellfish when that person is licensed pursuant to the provisions of Title ((75)) 77 RCW.

(4) "Purchaser" means a person who is solicited to become or does become obligated to a commercial telephone solicitor.

(5) "Salesperson" means any individual employed, appointed, or authorized by a commercial telephone solicitor, whether referred to by the commercial telephone solicitor as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone solicitor.

(6) "Service bureau" means a commercial telephone solicitor who contracts with any person to provide commercial telephone solicitation services.

(7) "Seller" means any person who contracts with any service bureau to purchase commercial telephone solicitation services.

(8) "Person" includes any individual, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.

(9) "Free gift, award, or prize" means a gratuity which the purchaser believes of a value equal to or greater than the value of the specific product, good, or service sought to be sold to the purchaser by the seller.

(10) "Solicit" means to initiate contact with a purchaser for the purpose of attempting to sell property, goods or services, where such purchaser has expressed no previous interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107. Provisions concerning the licensing of persons to sell food fish or shellfish now appear in Title 77 RCW.

Sec. 13. RCW 34.05.328 and 1997 c 430 s 1 are each amended to read as follows:

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(d) Determine, after considering alternative versions of the rule and the analysis required under (b) and (c) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(e) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(f) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(g) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(h) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (g) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Provide to the business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(b), the agency shall report to the legislature pursuant to (c) of this subsection;

(c) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the

insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter ((75-20)) 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule 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.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards; or

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the

effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

EXPLANATORY NOTE

Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000 c 107.

Sec. 14. RCW 35.21.404 and 1998 c 249 s 9 are each amended to read as follows:

A city or town is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW (~~(75.20.350)~~) 77.55.290 and has been permitted by the department of fish and wildlife.

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 15. RCW 35.63.230 and 1998 c 249 s 5 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW (~~(75.20.350(1))~~) 77.55.290(1) shall be reviewed and approved according to the provisions of RCW (~~(75.20.350)~~) 77.55.290.

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 16. RCW 35A.21.290 and 1998 c 249 s 10 are each amended to read as follows:

A code city is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW (~~(75.20.350)~~) 77.55.290 and has been permitted by the department of fish and wildlife.

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 17. RCW 35A.63.250 and 1998 c 249 s 6 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW (~~(75.20.350(1))~~) 77.55.290(1) shall be reviewed and approved according to the provisions of RCW (~~(75.20.350)~~) 77.55.290.

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 18. RCW 35A.69.010 and 1999 c 291 s 31 are each amended to read as follows:

Every code city shall have the powers, perform the functions and duties and enforce the regulations prescribed by general laws relating to food and drugs for any class of city as provided by Title 69 RCW; relating to water pollution control as provided by chapter 90.48 RCW; and relating to food fish and shellfish as provided by Title (~~(75)~~) 77 RCW.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107. Laws concerning food fish and shellfish are now codified in Title 77 RCW.

Sec. 19. RCW 36.70.982 and 1998 c 249 s 8 are each amended to read as follows:

A county is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW (~~(75.20.350)~~) 77.55.290 and has been permitted by the department of fish and wildlife.

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 20. RCW 36.70.992 and 1998 c 249 s 7 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the

criteria of RCW (~~(75.20.350(4))~~) 77.55.290(1) shall be reviewed and approved according to the provisions of RCW (~~(75.20.350)~~) 77.55.290.

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 21. RCW 36.70A.460 and 1998 c 249 s 11 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW (~~(75.20.350(4))~~) 77.55.290(1) shall be reviewed and approved according to the provisions of RCW (~~(75.20.350)~~) 77.55.290.

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 22. RCW 43.21B.005 and 1999 c 125 s 1 are each amended to read as follows:

(1) There is created an environmental hearings office of the state of Washington. The environmental hearings office shall consist of the pollution control hearings board created in RCW 43.21B.010, the forest practices appeals board created in RCW 76.09.210, the shorelines hearings board created in RCW 90.58.170, and the hydraulic appeals board created in RCW (~~(75.20.130)~~) 77.55.170. The (~~chairman~~) chair of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board, the forest practices appeals board, the shorelines hearings board, and the hydraulic appeals board shall be as provided by law.

(2) The chief executive officer of the environmental hearings office may appoint an administrative appeals judge who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, in cases before the boards comprising the office. The administrative appeals judge shall have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.

(3) The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the chief executive officer. Upon written request by the person so disciplined or terminated, the chief executive officer shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(4) The chief executive officer may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

(5) The chief executive officer may also contract for required services.

EXPLANATORY NOTE

RCW 75.20.130 was recodified as RCW 77.55.170 pursuant to 2000 c 107 § 129. The section is also made gender neutral.

Sec. 23. RCW 43.21C.0382 and 1998 c 249 s 12 are each amended to read as follows:

Decisions pertaining to watershed restoration projects as defined in RCW 89.08.460 are not subject to the requirements of RCW 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement projects meeting the criteria of RCW ((75.20.350(1))) 77.55.290(1) and being reviewed and approved according to the provisions of RCW ((75.20.350)) 77.55.290 are not subject to the requirements of RCW 43.21C.030(2)(c).

EXPLANATORY NOTE

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 24. RCW 43.21C.260 and 1999 sp.s. c 4 s 1201 are each amended to read as follows:

(1) Decisions pertaining to the following kinds of actions under chapter 4, Laws of 1999 sp. sess. are not subject to any procedural requirements implementing RCW 43.21C.030(2)(c): (a) Approval of forest road maintenance and abandonment plans under chapter 76.09 RCW and RCW ((75.20.100)) 77.55.100; (b) approval by the department of natural resources of future timber harvest schedules involving east-side clear cuts under rules implementing chapter 76.09 RCW; (c) acquisitions of forest lands in stream channel migration zones under RCW 76.09.040; and (d) acquisitions of conservation easements pertaining to forest lands in riparian zones under RCW 76.13.120.

(2) For purposes of the department's threshold determination on a watershed analysis, the department shall not make a determination of significance unless the prescriptions themselves, compared to rules or prescriptions in place prior to the analysis, will cause probable significant adverse impact on elements of the environment other than those addressed in the watershed analysis process. Nothing in this subsection shall be construed to effect the outcome of pending litigation regarding the department's authority in making a threshold determination on a watershed analysis.

EXPLANATORY NOTE

RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000 c 107 § 129.

Sec. 25. RCW 43.21K.010 and 1997 c 381 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) "State, regional, or local agency" means an agency, board, department, authority, or commission that administers environmental laws.

(2) "Coordinating agency" means the state, regional, or local agency with the primary regulatory responsibility for the proposed environmental excellence program agreement. If multiple agencies have jurisdiction to administer state environmental laws affected by an environmental excellence agreement, the department of ecology shall designate or act as the coordinating agency.

(3) "Director" means the individual or body of individuals in whom the ultimate legal authority of an agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the director.

(4) "Environmental laws" means chapters 43.21A, 70.94, 70.95, 70.105, 70.119A, (~~75.20~~) 77.55, 90.48, 90.52, 90.58, 90.64, and 90.71 RCW, and RCW 90.54.020(3)(b) and rules adopted under those chapters and section. The term environmental laws as used in this chapter does not include any provision of the Revised Code of Washington, or of any municipal ordinance or enactment, that regulates the selection of a location for a new facility.

(5) "Facility" means a site or activity that is regulated under any of the provisions of the environmental laws.

(6) "Legal requirement" includes any provision of an environmental law, rule, order, or permit.

(7) "Sponsor" means the owner or operator of a facility, including a municipal corporation, subject to regulation under the environmental laws of the state of Washington, or an authorized representative of the owner or operator, that submits a proposal for an environmental excellence program agreement.

(8) "Stakeholder" means a person who has a direct interest in the proposed environmental excellence program agreement or who represents a public interest in the proposed environmental excellence program agreement. Stakeholders may include communities near the project, local or state governments, permittees, businesses, environmental and other public interest groups, employees or employee representatives, or other persons.

EXPLANATORY NOTE

Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000 c 107.

Sec. 26. RCW 43.52.440 and 1983 1st ex.s. c 46 s 178 are each amended to read as follows:

Nothing contained in this chapter shall be construed to amend, modify or repeal in any manner RCW (~~75.20.110~~) 77.55.160, commonly known as the "Columbia River Sanctuary Act", and all matter herein contained shall be expressly subject to such act.

EXPLANATORY NOTE

RCW 75.20.110 was recodified as RCW 77.55.160 pursuant to 2000 c 107 § 129.

Sec. 27. RCW 43.101.010 and 2001 c 167 s 1 are each amended to read as follows:

When used in this chapter:

(1) The term "commission" means the Washington state criminal justice training commission.

(2) The term "boards" means the education and training standards boards, the establishment of which are authorized by this chapter.

(3) The term "criminal justice personnel" means any person who serves in a county, city, state, or port commission agency engaged in crime prevention, crime reduction, or enforcement of the criminal law.

(4) The term "law enforcement personnel" means any public employee or volunteer having as a primary function the enforcement of criminal laws in general or any employee or volunteer of, or any individual commissioned by, any municipal, county, state, or combination thereof, agency having as its primary function the enforcement of criminal laws in general as distinguished from an agency possessing peace officer powers, the primary function of which is the implementation of specialized subject matter areas. For the purposes of this subsection "primary function" means that function to which the greater allocation of resources is made.

(5) The term "correctional personnel" means any employee or volunteer who by state, county, municipal, or combination thereof, statute has the responsibility for the confinement, care, management, training, treatment, education, supervision, or counseling of those individuals whose civil rights have been limited in some way by legal sanction.

(6) A peace officer is "convicted" at the time a plea of guilty has been accepted, or a verdict of guilty or finding of guilt has been filed, notwithstanding the pendency of any future proceedings, including but not limited to sentencing, posttrial or postfact-finding motions and appeals. "Conviction" includes a deferral of sentence and also includes the equivalent disposition by a court in a jurisdiction other than the state of Washington.

(7) "Discharged for disqualifying misconduct" means terminated from employment for: (a) Conviction of (i) any crime committed under color of authority as a peace officer, (ii) any crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a), (iii) the unlawful use or possession of a controlled substance, or (iv) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law; (b) conduct that would constitute any of the crimes addressed in (a) of this subsection; or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination.

(8) A peace officer is "discharged for disqualifying misconduct" within the meaning of subsection (7) of this section under the ordinary meaning of the term and when the totality of the circumstances support a finding that the officer resigned in anticipation of discipline, whether or not the misconduct was discovered at the time of resignation, and when such discipline, if carried forward, would more likely than not have led to discharge for disqualifying misconduct within the meaning of subsection (7) of this section.

(9) When used in context of proceedings referred to in this chapter, "final" means that the peace officer has exhausted all available civil service appeals,

collective bargaining remedies, and all other such direct administrative appeals, and the officer has not been reinstated as the result of the action. Finality is not affected by the pendency or availability of state or federal administrative or court actions for discrimination, or by the pendency or availability of any remedies other than direct civil service and collective bargaining remedies.

(10) "Peace officer" means any law enforcement personnel subject to the basic law enforcement training requirement of RCW 43.101.200 and any other requirements of that section, notwithstanding any waiver or exemption granted by the commission, and notwithstanding the statutory exemption based on date of initial hire under RCW 43.101.200. Commissioned officers of the Washington state patrol, whether they have been or may be exempted by rule of the commission from the basic training requirement of RCW 43.101.200, are included as peace officers for purposes of this chapter. Fish and wildlife officers with enforcement powers for all criminal laws under RCW ((77.12.055)) 77.15.075 are peace officers for purposes of this chapter.

EXPLANATORY NOTE

RCW 77.12.055 was recodified as RCW 77.15.075 by 2001 c 253 § 61.

Sec. 28. RCW 69.04.930 and 1999 c 291 s 32 are each amended to read as follows:

It shall be unlawful for any person to sell at retail or display for sale at retail any food fish as defined in RCW 77.08.022 or shellfish as defined in RCW ((75.08.014)) 77.08.010, any meat, or any meat food product which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: PROVIDED, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization.

EXPLANATORY NOTE

RCW 75.08.011 was repealed by 2000 c 107 § 125. The section updates the citations for the correct definitions of food fish and shellfish.

Sec. 29. RCW 69.04.934 and 1993 c 282 s 4 are each amended to read as follows:

With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:

(1) Private sector cultured aquatic salmon without identifying the product as farm-raised salmon; or

(2) Commercially caught salmon designated as food fish under Title ((75)) 77 RCW without identifying the product as commercially caught salmon.

Identification of the products under subsections (1) and (2) of this section shall be made to the buyer at the point of sale such that the buyer can make an informed decision in purchasing.

A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107.

Sec. 30. RCW 70.105D.090 and 1994 c 257 s 14 are each amended to read as follows:

(1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, ~~((75.20))~~ 77.55, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, ~~((75.20))~~ 77.55, 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits or approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, ~~((75.20.025))~~ 77.55.030, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section.

EXPLANATORY NOTE

Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000 c 107.

RCW 75.20.025 was recodified as RCW 77.55.030 pursuant to 2000 c 107 § 129.

Sec. 31. RCW 72.63.040 and 1989 c 185 s 13 are each amended to read as follows:

The costs of implementation of the projects prescribed by this chapter shall be supported to the extent that funds are available under the provisions of chapter ((75.52)) 77.100 RCW, and from correctional industries funds.

EXPLANATORY NOTE

Chapter 75.52 RCW was recodified as chapter 77.100 RCW by 2000 c 107.

Sec. 32. RCW 76.09.030 and 1999 sp.s. c 4 s 1001 are each amended to read as follows:

(1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

- (a) The commissioner of public lands or the commissioner's designee;
- (b) The director of the department of community, trade, and economic development or the director's designee;
- (c) The director of the department of agriculture or the director's designee;
- (d) The director of the department of ecology or the director's designee;
- (e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor: PROVIDED, That such member's service on the board shall be conditioned on the member's continued service as an elected county official; and

(g) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter ((75.20)) 77.55 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.

(3) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her

successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chairman of the board.

(4) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(5) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

EXPLANATORY NOTE

Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000 c 107.

Sec. 33. RCW 76.09.063 and 1997 c 425 s 5 are each amended to read as follows:

When a private landowner is applying for a forest practices permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of fish and wildlife as provided in RCW ((77.12.830)) 77.55.300, the department shall comply with the terms of that agreement when evaluating the permit application.

EXPLANATORY NOTE

RCW 77.12.830 was recodified as RCW 77.55.300 pursuant to 2000 c 107 § 129.

Sec. 34. RCW 76.09.350 and 1997 c 290 s 1 are each amended to read as follows:

The legislature recognizes the importance of providing the greatest diversity of habitats, particularly riparian, wetland, and old growth habitats, and of assuring the greatest diversity of species within those habitats for the survival and reproduction of enough individuals to maintain the native wildlife of Washington forest lands. The legislature also recognizes the importance of long-term habitat productivity for natural and wild fish, for the protection of hatchery water supplies, and for the protection of water quality and quantity to meet the needs of people, fish, and wildlife. The legislature recognizes the importance of maintaining and enhancing fish and wildlife habitats capable of sustaining the commercial and noncommercial uses of fish and wildlife. The legislature further recognizes the importance of the continued growth and development of the state's forest products industry which has a vital stake in the long-term productivity of both the public and private forest land base.

The development of a landscape planning system would help achieve these goals. Landowners and resource managers should be provided incentives to voluntarily develop long-term multispecies landscape management plans that will provide protection to public resources. Because landscape planning represents a departure from the use of standard baseline rules and may result in

unintended consequences to both the affected habitats and to a landowner's economic interests, the legislature desires to establish up to seven experimental pilot programs to gain experience with landscape planning that may prove useful in fashioning legislation of a more general application.

(1) Until December 31, 2000, the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, is granted authority to select not more than seven pilot projects for the purpose of developing individual landowner multispecies landscape management plans.

(a) Pilot project participants must be selected by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, no later than October 1, 1997.

(b) The number and the location of the pilot projects are to be determined by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, and should be selected on the basis of risk to the habitat and species, variety and importance of species and habitats in the planning area, geographic distribution, surrounding ownership, other ongoing landscape and watershed planning activities in the area, potential benefits to water quantity and quality, financial and staffing capabilities of participants, and other factors that will contribute to the creation of landowner multispecies landscape planning efforts.

(c) Each pilot project shall have a landscape management plan with the following elements:

(i) An identification of public resources selected for coverage under the plan and measurable objectives for the protection of the selected public resources;

(ii) A termination date of not later than 2050;

(iii) A general description of the planning area including its geographic location, physical and biological features, habitats, and species known to be present;

(iv) An identification of the existing forest practices rules that will not apply during the term of the plan;

(v) Proposed habitat management strategies or prescriptions;

(vi) A projection of the habitat conditions likely to result from the implementation of the specified management strategies or prescriptions;

(vii) An assessment of habitat requirements and the current habitat conditions of representative species included in the plan;

(viii) An assessment of potential or likely impacts to representative species resulting from the prescribed forest practices;

(ix) A description of the anticipated benefits to those species or other species as a result of plan implementation;

(x) A monitoring plan;

(xi) Reporting requirements including a schedule for review of the plan's performance in meeting its objectives;

(xii) Conditions under which a plan may be modified, including a procedure for adaptive management;

(xiii) Conditions under which a plan may be terminated;

(xiv) A procedure for adaptive management that evaluates the effectiveness of the plan to meet its measurable public resources objectives, reflects changes in the best available science, and provides changes to its habitat management

strategies, prescriptions, and hydraulic project standards to the extent agreed to in the plan and in a timely manner and schedule;

(xv) A description of how the plan relates to publicly available plans of adjacent federal, state, tribal, and private timberland owners; and

(xvi) A statement of whether the landowner intends to apply for approval of the plan under applicable federal law.

(2) Until December 31, 2000, the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, shall approve a landscape management plan and enter into a binding implementation agreement with the landowner when such departments find, based upon the best scientific data available, that:

(a) The plan contains all of the elements required under this section including measurable public resource objectives;

(b) The plan is expected to be effective in meeting those objectives;

(c) The landowner has sufficient financial resources to implement the management strategies or prescriptions to be implemented by the landowner under the plan;

(d) The plan will:

(i) Provide better protection than current state law for the public resources selected for coverage under the plan considered in the aggregate; and

(ii) Compared to conditions that could result from compliance with current state law:

(A) Not result in poorer habitat conditions over the life of the plan for any species selected for coverage that is listed as threatened or endangered under federal or state law, or that has been identified as a candidate for such listing, at the time the plan is approved; and

(B) Measurably improve habitat conditions for species selected for special consideration under the plan;

(e) The plan shall include watershed analysis or provide for a level of protection that meets or exceeds the protection that would be provided by watershed analysis, if the landowner selects fish or water quality as a public resource to be covered under the plan. Any alternative process to watershed analysis would be subject to timely peer review;

(f) The planning process provides for a public participation process during the development of the plan, which shall be developed by the department in cooperation with the landowner.

The management plans must be submitted to the department and the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, no later than March 1, 2000. The department shall provide an opportunity for public comment on the proposed plan. The comment period shall not be less than forty-five days. The department shall approve or reject plans within one hundred twenty days of submittal by the landowner of a final plan. The decision by the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner has elected to cover water quality in the plan, to approve or disapprove the management plan is subject to the environmental review process of chapter 43.21C RCW, provided that any public comment

period provided for under chapter 43.21C RCW shall run concurrently with the public comment period provided in this subsection (2).

(3) After a landscape management plan is adopted:

(a) Forest practices consistent with the plan need not comply with:

(i) The specific forest practices rules identified in the plan; and

(ii) Any forest practice rules and policies adopted after the approval of the plan to the extent that the rules:

(A) Have been adopted primarily for the protection of a public resource selected for coverage under the plan; or

(B) Provide for procedural or administrative obligations inconsistent with or in addition to those provided for in the plan with respect to those public resources; and

(b) If the landowner has selected fish as one of the public resources to be covered under the plan, the plan shall serve as the hydraulic project approval for the life of the plan, in compliance with RCW ((75.20.100)) 77.55.100.

(4) The department is authorized to issue a single landscape level permit valid for the life of the plan to a landowner who has an approved landscape management plan and who has requested a landscape permit from the department. Landowners receiving a landscape level permit shall meet annually with the department and the department of fish and wildlife, and the department of ecology where water quality has been selected as a public resource to be covered under the plan, to review the specific forest practices activities planned for the next twelve months and to determine whether such activities are in compliance with the plan. The departments will consult with the affected Indian tribes and other interested parties who have expressed an interest in connection with the review. The landowner is to provide ten calendar days' notice to the department prior to the commencement of any forest practices authorized under a landscape level permit. The landscape level permit will not impose additional conditions relating to the public resources selected for coverage under the plan beyond those agreed to in the plan. For the purposes of chapter 43.21C RCW, forest practices conducted in compliance with an approved plan are deemed not to have the potential for a substantial impact on the environment as to any public resource selected for coverage under the plan.

(5) Except as otherwise provided in a plan, the agreement implementing the landscape management plan is an agreement that runs with the property covered by the approved landscape management plan and the department shall record notice of the plan in the real property records of the counties in which the affected properties are located. Prior to its termination, no plan shall permit forest land covered by its terms to be withdrawn from such coverage, whether by sale, exchange, or other means, nor to be converted to nonforestry uses except to the extent that such withdrawal or conversion would not measurably impair the achievement of the plan's stated public resource objectives. If a participant transfers all or part of its interest in the property, the terms of the plan still apply to the new landowner for the plan's stated duration unless the plan is terminated under its terms or unless the plan specifies the conditions under which the terms of the plan do not apply to the new landowner.

(6) The departments of natural resources, fish and wildlife, and ecology shall seek to develop memorandums of agreements with federal agencies and affected Indian tribes relating to tribal issues in the landscape management

plans. The departments shall solicit input from affected Indian tribes in connection with the selection, review, and approval of any landscape management plan. If any recommendation is received from an affected Indian tribe and is not adopted by the departments, the departments shall provide a written explanation of their reasons for not adopting the recommendation.

(7) The department is directed to report to the forest practices board annually through the year 2000, but no later than December 31st of each year, on the status of each pilot project. The department is directed to provide to the forest practices board, no later than December 31, 2000, an evaluation of the pilot projects including a determination if a permanent landscape planning process should be established along with a discussion of what legislative and rule modifications are necessary.

EXPLANATORY NOTE

RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000 c 107 § 129.

Sec. 35. RCW 76.09.910 and 1975 1st ex.s. c 200 s 12 are each amended to read as follows:

Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (~~((RCW 75.20.100))~~) (RCW 77.55.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended.

EXPLANATORY NOTE

RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000 c 107 § 129.

Sec. 36. RCW 76.13.100 and 1999 sp.s. c 4 s 501 are each amended to read as follows:

(1) The legislature finds that increasing regulatory requirements continue to diminish the economic viability of small forest landowners. The concerns set forth in RCW (~~(75.46.300)~~) 77.85.180 about the importance of sustaining forestry as a viable land use are particularly applicable to small landowners because of the location of their holdings, the expected complexity of the regulatory requirements, and the need for significant technical expertise not readily available to small landowners. The further reduction in harvestable timber owned by small forest landowners as a result of the rules to be adopted under RCW 76.09.055 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, as defined in RCW 76.09.020.

(2) The legislature finds that the concerns identified in subsection (1) of this section should be addressed by establishing within the department of natural resources a small forest landowner office that shall be a resource and focal point for small forest landowner concerns and policies. The legislature further finds

that a forestry riparian easement program shall be established to acquire easements from small landowners along riparian and other areas of value to the state for protection of aquatic resources. The legislature further finds that small forest landowners should have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources. The small forest landowner office should be responsible for assisting small landowners in the development and implementation of these plans or restrictions.

EXPLANATORY NOTE

RCW 75.46.300 was recodified as RCW 77.85.180 pursuant to 2000 c 107 § 135.

Sec. 37. RCW 76.42.060 and 1999 sp.s. c 4 s 601 are each amended to read as follows:

It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules duly adopted thereunder or any deposit allowed to be made under and in compliance with chapter 76.09 or ((75.46)) 77.85 RCW and any rules duly adopted under those chapters. Violation of this section shall be a misdemeanor.

EXPLANATORY NOTE

Chapter 75.46 RCW was recodified as chapter 77.85 RCW by 2000 c 107.

Sec. 38. RCW 77.15.310 and 2000 c 107 s 240 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 77.55.040 or ((77.16.220)) 77.55.320; 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.

EXPLANATORY NOTE

RCW 77.16.220 was recodified as RCW 77.55.320 pursuant to 2001 c 253 § 61.

Sec. 39. RCW 78.44.050 and 1997 c 185 s 1 are each amended to read as follows:

The department shall have the exclusive authority to regulate surface mine reclamation. No county, city, or town may require for its review or approval a separate reclamation plan or application. The department may, however, delegate some or all of its enforcement authority by contractual agreement to a county, city, or town that employs personnel who are, in the opinion of the department, qualified to enforce plans approved by the department. All counties, cities, or towns shall have the authority to zone surface mines and adopt ordinances regulating operations as provided in this chapter, except that county, city, or town operations ordinances may be preempted by the department during the emergencies outlined in RCW 78.44.200 and related rules.

This chapter shall not alter or preempt any provisions of the state ((fisheries laws (Title 75 RCW), the state)) water allocation and use laws (chapters 90.03 and 90.44 RCW), the state water pollution control laws (chapter 90.48 RCW), the state fish and wildlife laws (Title 77 RCW), state noise laws or air quality laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C RCW), state growth management (chapter 36.70A RCW), state drinking water laws (chapters 43.20 and 70.119A RCW), or any other state statutes.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107.

Sec. 40. RCW 79.76.060 and 1974 ex.s. c 43 s 6 are each amended to read as follows:

This chapter is intended to preempt local regulation of the drilling and operation of wells for geothermal resources but shall not be construed to permit the locating of any well or drilling when such well or drilling is prohibited under state or local land use law or regulations promulgated thereunder. Geothermal resources, byproducts and/or waste products which have escaped or been released from the energy transfer system and/or a mineral recovery process shall be subject to provisions of state law relating to the pollution of ground or surface waters (Title 90 RCW), provisions of the state fisheries law ((Title 75 RCW,)) and the state game laws (Title 77 RCW), and any other state environmental pollution control laws. Authorization for use of byproduct water resources for all beneficial uses, including but not limited to greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, shall be subject to the appropriation procedure as provided in Title 90 RCW.

EXPLANATORY NOTE

Title 75 RCW was recodified, repealed, and/or decodified in its entirety by 2000 c 107.

Sec. 41. RCW 79.90.150 and 1991 c 337 s 1 are each amended to read as follows:

When gravel, rock, sand, silt or other material from any aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of such material may be authorized by the department of natural resources for a public purpose on land owned or leased by the state or any municipality, county, or public corporation: PROVIDED, That when no public land site is available for deposit of such material, its deposit on private land with the landowner's permission is authorized and may be designated by the department of natural resources to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging such use shall first obtain written permission from the department of natural resources. No payment of royalty shall be required for such gravel, rock, sand, silt, or other material used for such public purpose, but a charge will be made if such material is subsequently sold or used for some other purpose: PROVIDED, That the department may authorize such public agency or private landowner to dispose of such material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of RCW ((75.20.100)) 77.55.100 or eliminate the necessity of obtaining a permit for such removal from other state or federal agencies as otherwise required by law.

EXPLANATORY NOTE

RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000 c 107 § 129.

Sec. 42. RCW 79.94.390 and 1994 c 264 s 66 are each amended to read as follows:

The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for recreational use and for the taking of fish and shellfish for personal use as defined in RCW ((75.08.044)) 77.08.010:

Parcel No. 1. (Point Whitney) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above described tidelands of the second class conveyed to the state of Washington, department of fish and wildlife through deed issued May 14, 1925, under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The tidelands of the second class lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26 north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22 E 1.69 chains from an angle point in said meander line which is S 15 W 1.20 chains, more or less, from the point of intersection of the north line of said lot 5 and said meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (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. 4. (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. 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.

Subject to easements for rights of way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949, and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of 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 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster reserve and easterly of the easterly line of a tract of tidelands of the second class conveyed through deed issued July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted tidelands of the first class, and tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as tidelands of the second class

through deed issued December 29, 1908, application No. 4957, records of department of public lands.

Subject to an easement for right of way for transmission cable line granted to the United States of America Army Engineers June 7, 1943, under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (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. 11. (Cattle Point) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any tidelands of the second class in front of said lot 10, section 7 conveyed through deed issued June 1, 1912, under application No. 6906, records of department of public lands.

Parcel No. 12. (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.

EXPLANATORY NOTE

RCW 75.08.011 was repealed by 2000 c 107 § 125. RCW 77.08.010 has the same definition of "personal use" that appeared in RCW 75.08.011.

Sec. 43. RCW 79.96.080 and 1990 c 163 s 4 are each amended to read as follows:

(1) Geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department of natural resources may enter into an agreement with the purchaser for the harvesting of geoducks. The department of natural resources may place terms and conditions in the harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents,

or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon such termination of the agreement by the harvester, the harvester shall be reimbursed by the department of natural resources for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.): PROVIDED, That for the purposes of this section and RCW ((75.24.100)) 77.60.070 as now or hereafter amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement: PROVIDED FURTHER, That for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such entity until compliance with this subsection is secured.

EXPLANATORY NOTE

RCW 75.24.100 was recodified as RCW 77.60.070 pursuant to 2000 c 107 § 130.

Sec. 44. RCW 79A.25.240 and 2000 c 11 s 78 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)) 77.85.120. The committee shall also be responsible for tracking salmon recovery expenditures under RCW ((75.46.180)) 77.85.140. The committee shall provide all necessary administrative support to the board, and the board shall be located with the committee. The committee shall provide necessary information to the salmon recovery office.

EXPLANATORY NOTE

RCW 75.46.160 and 75.46.180 were recodified as RCW 77.85.120 and 77.85.140, respectively, pursuant to 2000 c 107 § 135.

Sec. 45. RCW 79A.60.010 and 2000 c 11 s 92 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)~~ 77.65.480 or 77.65.440) 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 79A.60.470 or as designated by the commission under RCW 79A.60.495.

EXPLANATORY NOTE

RCW 77.32.211 and 75.28.780 were recodified as RCW 77.65.480 and 77.65.440, respectively, pursuant to 2000 c 107 § 31.

Sec. 46. RCW 82.27.070 and 1999 c 126 s 4 are each amended to read as follows:

All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the excise tax on anadromous game fish, which shall be deposited in the wildlife fund, and, during the period January 1, 2000, to December 31, 2005, twenty-five forty-sixths of the revenues derived from the excise tax on sea urchins collected under RCW 82.27.020 shall be

deposited into the sea urchin dive fishery account created in RCW (~~(75.30.240)~~) 77.70.150, and twenty-five forty-sixths of the revenues derived from the excise tax on sea cucumbers collected under RCW 82.27.020 shall be deposited into the sea cucumber dive fishery account created in RCW (~~(75.30.250)~~) 77.70.190.

EXPLANATORY NOTE

RCW 75.30.210 and 75.30.250 were recodified as RCW 77.70.150 and 77.70.190, respectively, pursuant to 2000 c 107 § 132.

Sec. 47. RCW 89.08.470 and 1998 c 249 s 13 are each amended to read as follows:

(1) By January 1, 1996, the Washington conservation commission shall develop, in consultation with other state agencies, tribes, and local governments, a consolidated application process for permits for a watershed restoration project developed by an agency or sponsored by an agency on behalf of a volunteer organization. The consolidated process shall include a single permit application form for use by all responsible state and local agencies. The commission shall encourage use of the consolidated permit application process by any federal agency responsible for issuance of related permits. The permit application forms to be consolidated shall include, at a minimum, applications for: (a) Approvals related to water quality standards under chapter 90.48 RCW; (b) hydraulic project approvals under chapter (~~(75.20)~~) 77.55 RCW; and (c) section 401 water quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

(2) If a watershed restoration project is also a fish habitat enhancement project that meets the criteria of RCW (~~(75.20.350(1))~~) 77.55.290(1), the project sponsor shall instead follow the permit review and approval process established in RCW (~~(75.20.350)~~) 77.55.290 with regard to state and local government permitting requirements. The sponsor shall so notify state and local permitting authorities.

EXPLANATORY NOTE

Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000 c 107.

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Sec. 48. RCW 90.03.247 and 1996 c 186 s 523 are each amended to read as follows:

Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW (~~(75.20.400)~~) 77.55.100 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such

minimum flows, levels, or similar restrictions, the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the affected Indian tribes. Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.

EXPLANATORY NOTE

RCW 75.20.100 was recodified as RCW 77.55.100 pursuant to 2000 c 107 § 129.

Sec. 49. RCW 90.58.147 and 1998 c 249 s 4 are each amended to read as follows:

(1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

- (a) The project has been approved by the department of fish and wildlife;
- (b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter (~~75.20~~) 77.55 RCW; and
- (c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of RCW (~~75.20.350~~) 77.55.290 are determined to be consistent with local shoreline master programs.

EXPLANATORY NOTE

Chapter 75.20 RCW was recodified as chapter 77.55 RCW by 2000 c 107.

RCW 75.20.350 was recodified as RCW 77.55.290 pursuant to 2000 c 107 § 129.

Passed by the Senate March 6, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 40

[Senate Bill 5224]

AFFORDABLE HOUSING ADVISORY BOARD—MEMBERSHIP

AN ACT Relating to the membership of the affordable housing advisory board; and amending RCW 43.185B.020.

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

Sec. 1. RCW 43.185B.020 and 1993 c 478 s 5 are each amended to read as follows:

(1) The department shall establish the affordable housing advisory board to consist of (~~((twenty-one))~~) twenty-two members.

(a) The following (~~((eighteen))~~) nineteen members shall be appointed by the governor:

(i) Two representatives of the residential construction industry;

(ii) Two representatives of the home mortgage lending profession;

(iii) One representative of the real estate sales profession;

(iv) One representative of the apartment management and operation industry;

(v) One representative of the for-profit housing development industry;

(vi) One representative of for-profit rental housing owners;

(vii) One representative of the nonprofit housing development industry;

~~((vii))~~ (viii) One representative of homeless shelter operators;

~~((viii))~~ (ix) One representative of lower-income persons;

~~((ix))~~ (x) One representative of special needs populations;

~~((x))~~ (xi) One representative of public housing authorities as created under chapter 35.82 RCW;

~~((xi))~~ (xii) Two representatives of the Washington association of counties, one representative shall be from a county that is located east of the crest of the Cascade mountains;

~~((xii))~~ (xiii) Two representatives of the association of Washington cities, one representative shall be from a city that is located east of the crest of the Cascade mountains;

~~((xiii))~~ (xiv) One representative to serve as chair of the affordable housing advisory board;

~~((xiv))~~ (xv) One representative at large.

(b) The following three members shall serve as ex officio, nonvoting members:

(i) The director or the director's designee;

(ii) The executive director of the Washington state housing finance commission or the executive director's designee; and

(iii) The secretary of social and health services or the secretary's designee.

(2)(a) The members of the affordable housing advisory board appointed by the governor shall be appointed for four-year terms, except that the chair shall be appointed to serve a two-year term. The terms of five of the initial appointees shall be for two years from the date of appointment and the terms of six of the initial appointees shall be for three years from the date of appointment. The governor shall designate the appointees who will serve the two-year and three-year terms. The members of the advisory board shall serve without

compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(b) The governor, when making appointments to the affordable housing advisory board, shall make appointments that reflect the cultural diversity of the state of Washington.

(3) The affordable housing advisory board shall serve as the department's principal advisory body on housing and housing-related issues, and replaces the department's existing boards and task forces on housing and housing-related issues.

(4) The affordable housing advisory board shall meet regularly and may appoint technical advisory committees, which may include members of the affordable housing advisory board, as needed to address specific issues and concerns.

(5) The department, in conjunction with the Washington state housing finance commission and the department of social and health services, shall supply such information and assistance as are deemed necessary for the advisory board to carry out its duties under this section.

(6) The department shall provide administrative and clerical assistance to the affordable housing advisory board.

Passed by the Senate February 26, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 41

[Engrossed Substitute Senate Bill 5229]

MOTORCYCLES—ENDORSEMENTS, EDUCATION

AN ACT Relating to a motorcycle skills education program for three-wheeled motorcycles; amending RCW 46.20.500, 46.20.505, 46.20.515, 46.81A.010, and 46.81A.020; creating a new section; and providing an effective date.

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

Sec. 1. RCW 46.20.500 and 2002 c 247 s 6 are each amended to read as follows:

(1) No person may drive either a two-wheeled or a three-wheeled motorcycle, or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device.

Sec. 2. RCW 46.20.505 and 2002 c 352 s 16 are each amended to read as follows:

Every person applying for a special endorsement of a driver's license authorizing such person to drive a two or three-wheeled motorcycle or a motor-driven cycle shall pay a fee of five dollars, which is not refundable. In addition, the endorsement fee for the initial motorcycle endorsement shall not exceed ten dollars, and the subsequent renewal endorsement fee shall not exceed twenty-five dollars, unless the endorsement is renewed or extended for a period other than five years, in which case the subsequent renewal endorsement fee shall not exceed five dollars for each year that the endorsement is renewed or extended. The initial and renewal endorsement fees shall be deposited in the motorcycle safety education account of the highway safety fund.

Sec. 3. RCW 46.20.515 and 2002 c 197 s 1 are each amended to read as follows:

The motorcycle endorsement examination must emphasize maneuvers necessary for on-street operation, including emergency braking and turning as may be required to avoid an impending collision. The examination for a two-wheeled motorcycle endorsement and the examination for a three-wheeled motorcycle endorsement must be separate and distinct examinations emphasizing the skills and maneuvers necessary to operate each type of motorcycle. The department may waive all or part of the examination for persons who satisfactorily complete the voluntary motorcycle operator training and education program authorized under RCW 46.20.520 or who satisfactorily complete a private motorcycle skills education course that has been certified by the department under RCW 46.81A.020.

Sec. 4. RCW 46.81A.010 and 1988 c 227 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) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department.

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

(3) "Director" means the director of licensing.

(4) "Motorcycle" means a ~~((motorcycle licensed under chapter 46.16 RCW, and does not include motorized bicycles, mopeds, scooters, off-road motorcycle, motorized tricycles, side-car equipped motorcycles, or four-wheel all-terrain vehicles))~~ motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding farm tractors, electric personal assistive mobility devices, mopeds, motorized bicycles, and off-road motorcycles.

Sec. 5. RCW 46.81A.020 and 2002 c 197 s 2 are each amended to read as follows:

(1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute ((a)) separate novice and advanced motorcycle skills education courses for both ~~((novice and advanced motorcycle riders))~~ two-wheeled and

three-wheeled motorcycles that ((is)) are each a minimum of eight hours and no more than sixteen hours at a cost of (i) no more than fifty dollars for Washington state residents under the age of eighteen, and (ii) no more than one hundred dollars for Washington state residents who are eighteen years of age or older and military personnel of any age stationed in Washington state;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors for two-wheeled motorcycles to conduct at least three classes in a one-year period, and all instructors for three-wheeled motorcycles to conduct at least one class in a one-year period, to maintain their teaching eligibility;

(d) Encourage the use of radio or intercom equipped helmets when, in the opinion of the instructor, radio or intercom equipped helmets improve the quality of instruction.

(4) The department may enter into agreements to review and certify that a private motorcycle skills education course meets educational standards equivalent to those required of courses conducted under the motorcycle skills education program. An agreement entered into under this subsection must provide that the department may conduct periodic audits to ensure that educational standards continue to meet those required for courses conducted under the motorcycle skills education program, and that the costs of the review, certification, and audit process will be borne by the party seeking certification.

(5) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved or certified motorcycle skills education course.

NEW SECTION. Sec. 6. This act shall be known as the Monty Lish Memorial Act.

NEW SECTION. Sec. 7. This act takes effect January 1, 2004.

Passed by the Senate March 11, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 42

[Senate Bill 5244]

UNCLASSIFIED CITIES

AN ACT Relating to powers of unclassified cities; and adding new sections to chapter 35.30 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.30 RCW to read as follows:

If the legislative body of an unclassified city determines that it would serve the best interests and general welfare of such municipality, the body may by resolution adopt any powers granted to cities classified under Title 35A RCW including, but not limited to, the power to define the functions, powers, and duties of its officers and employees.

NEW SECTION. Sec. 2. A new section is added to chapter 35.30 RCW to read as follows:

(1) When a majority of the legislative body of an unclassified city determines that it would serve the best interests and general welfare of such municipality to change the election procedures of such city to the procedures specified in this section, such legislative body may, by resolution, declare its intention to adopt such procedures for the city. Such resolution must be adopted at least one hundred eighty days before the general municipal election at which the new election procedures are implemented. Within ten days after the passage of the resolution, the legislative body shall cause it to be published at least once in a newspaper of general circulation within the city.

(2) All general municipal elections in an unclassified city adopting a resolution under subsection (1) of this section shall be held biennially in the odd-numbered years as provided in RCW 29.13.020 and shall be held in accordance with the general election laws of the state.

The term of the treasurer shall not commence in the same biennium in which the term of the mayor commences. Candidates for the city council shall run for specific council positions. The staggering of terms of city officers shall be established at the first election, where the simple majority of the persons elected as councilmembers receiving the greatest numbers of votes shall be elected to four-year terms of office and the remainder of the persons elected as councilmembers and the treasurer shall be elected to two-year terms of office. Thereafter, all elected city officers shall be elected for four-year terms and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170.

Passed by the Senate February 18, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 43

[Substitute Senate Bill 5251]

FOREIGN JUDGMENTS

AN ACT Relating to foreign judgments; and amending RCW 4.64.030 and 6.36.035.

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

Sec. 1. RCW 4.64.030 and 2000 c 41 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 foreign judgments, 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, and in the entry of a foreign judgment, the filing and expiration dates of the judgment under the laws of the original jurisdiction.

(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; 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.

Sec. 2. RCW 6.36.035 and 1997 c 358 s 1 are each amended to read as follows:

(1) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, ~~((and))~~ the judgment creditor, and the filing and expiration date of the judgment in the originating jurisdiction.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the judgment creditor shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer if any in this state. In addition, the judgment creditor shall file proof of mailing with the clerk.

(3)(a) No execution or other process for enforcement of a foreign judgment filed in the office of the clerk of a superior court shall be allowed until ten days after the proof of mailing has been filed with the clerk by the judgment creditor.

(b) No execution or other process for enforcement of a foreign judgment filed in the office of the clerk of a district court shall be allowed until fourteen days after the proof of mailing has been filed with the clerk by the judgment creditor.

(c) Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

Passed by the Senate March 19, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 44

[Substitute Senate Bill 5265]

BOTTLED WINE SALES—FARMERS MARKETS

AN ACT Relating to the marketing of bottled wine at farmers markets; and amending RCW 66.24.170.

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

Sec. 1. RCW 66.24.170 and 2000 c 141 s 1 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)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) 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 by the Senate February 21, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 45

[Senate Bill 5273]

EMPLOYMENT EXAMINATIONS—VETERANS' SCORING CRITERIA

AN ACT Relating to the 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 2002 c 292 s 4 are each amended to read as follows:

In all competitive examinations, unless otherwise provided 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 scoring criteria status to all veterans as defined in RCW 41.04.007, 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 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 added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in 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 military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(3) Five percent to a veteran who 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. The percentage shall be added to the first promotional examination only;

(4) All veterans' scoring criteria ~~((specified in subsections (1), (2), and (3) of this section must))~~ may be claimed ~~((within fifteen years of the date of))~~ upon 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 by the Senate March 16, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 46

[Substitute Senate Bill 5290]

HORSE RACING COMMISSION—CRIMINAL INFORMATION

AN ACT Relating to authorizing continued receipt of criminal history information by the horse racing commission; repealing 2000 c 204 s 2 (uncodified); and declaring an emergency.

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

NEW SECTION. **Sec. 1.** 2000 c 204 s 2 (uncodified) is repealed.

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 by the Senate February 21, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 47

[Substitute Senate Bill 5321]

PAYMENT AGREEMENTS—PUBLIC HOSPITAL DISTRICTS

AN ACT Relating to payment agreements; and amending RCW 39.96.020.

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

Sec. 1. RCW 39.96.020 and 1993 c 273 s 2 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter~~(:)~~ unless the context clearly requires otherwise.

(1) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, port district, public hospital district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its terms to commence or had at least

one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a payment agreement on behalf of any state institution of higher education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement.

Passed by the Senate March 7, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 48

[Engrossed Senate Bill 5374]

ELECTION ACCOUNT

AN ACT Relating to the election account; reenacting and amending RCW 43.84.092; adding a new section to chapter 29.04 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 29.04 RCW to read as follows:

(1) The election account is created in the state treasury.

(2) The following receipts must be deposited into the account:

Amounts received from the federal government under Public Law 107-252 (October 29, 2002), known as the "Help America Vote Act of 2002," including any amounts received under subsequent amendments to the act;

amounts appropriated or otherwise made available by the state legislature for the purposes of carrying out activities for which federal funds are provided to the state under Public Law 107-252, including any amounts received under subsequent amendments to the act;

and such other amounts as may be appropriated by the legislature to the account.

(3) Moneys in the account may be spent only after appropriation. Expenditures from the account may be made only to facilitate the implementation of Public Law 107-252.

Sec. 2. RCW 43.84.092 and 2002 c 242 s 2, 2002 c 114 s 24, and 2002 c 56 s 402 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 drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the election account, 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 multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax

equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the Puyallup tribal settlement account, the regional transportation investment district 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 Tacoma Narrows toll bridge 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 fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, 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. 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 by the Senate March 18, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 49

[Substitute Senate Bill 5505]

PUBLIC HIGH SCHOOLS—COURSE OPTIONS

AN ACT Relating to courses of study options offered by public high schools; and amending RCW 28A.230.010 and 28A.230.130.

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

Sec. 1. RCW 28A.230.010 and 1990 c 33 s 237 are each amended to read as follows:

School district boards of directors shall identify and offer courses with content that meet or exceed: (1) The basic education skills identified in RCW 28A.150.210; (2) the graduation requirements under RCW 28A.230.090; ~~((and))~~ (3) the courses required to meet the minimum college entrance requirements under RCW 28A.230.130; and (4) the course options for career development under RCW 28A.230.130. Such courses may be applied or theoretical, academic, or vocational.

Sec. 2. RCW 28A.230.130 and 1991 c 116 s 9 are each amended to read as follows:

(1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) All public high schools of the state shall provide a program, directly or in cooperation with a community or technical college, a skills center, an apprenticeship committee, or another school district, for students who plan to pursue career or work opportunities other than entrance to a baccalaureate-granting institution after being granted a high school diploma. These programs may:

(a) Help students demonstrate the application of essential academic learning requirements to the world of work, occupation-specific skills, knowledge of more than one career in a chosen pathway, and employability and leadership skills; and

(b) Help students demonstrate the knowledge and skill needed to prepare for industry certification, and/or have the opportunity to articulate to postsecondary education and training programs.

(3) The state board of education, upon request from local school districts, may grant (~~temporary exemptions~~) waivers from the requirements to provide the program described in subsections (1) and (2) of this section for reasons relating to school district size and the availability of staff authorized to teach subjects which must be provided. In considering waiver requests related to programs in subsection (2) of this section, the state board of education shall consider the extent to which the school district has offered such programs before the 2003-04 school year.

Passed by the Senate March 7, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 50

[Substitute Senate Bill 5550]

SECURE COMMUNITY TRANSITION FACILITY SITING

AN ACT Relating to prohibiting secure community transition facilities from being sited near public and private youth camps; amending RCW 71.09.342; reenacting and amending RCW 71.09.020; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 71.09.020 and 2002 c 68 s 4 and 2002 c 58 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) "Department" means the department of social and health services.

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to

the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(10) "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

(11) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(12) "Secretary" means the secretary of social and health services or the secretary's designee.

(13) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(14) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facilities established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(15) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the

offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(16) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(17) "Total confinement facility" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

Sec. 2. RCW 71.09.342 and 2002 c 68 s 9 are each amended to read as follows:

(1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any other law, this section preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the department to site, construct, renovate, occupy, and operate secure community transition facilities within the borders of the following:

(a) Any county that had five or more persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause has been made, on April 1, 2001, if the department determines that the county has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities. This subsection does not apply to the county in which the secure community transition facility authorized under RCW 71.09.250(1) is located; and

(b) Any city located within a county listed in (a) of this subsection that the department determines has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities.

(2) The department's determination under subsection (1)(a) or (b) of this section is final and is not subject to appeal under chapter 34.05 or 36.70A RCW.

(3) When siting a facility in a county or city that has been preempted under this section, the department shall consider the policy guidelines established under RCW (~~(71.09.275)~~) 71.09.285 and 71.09.290 and shall hold the hearings required in RCW 71.09.315.

(4) Nothing in this section prohibits the department from:

(a) Siting a secure community transition facility in a city or county that has complied with the requirements of RCW 36.70A.200 with respect to secure community transition facilities, including a city that is located within a county that has been preempted. If the department sites a secure community transition facility in such a city or county, the department shall use the process established by the city or county for siting such facilities; or

(b) Consulting with a city or county that has been preempted under this section regarding the siting of a secure community transition facility.

(5)(a) A preempted city or county may propose public safety measures specific to any finalist site to the department. The measures must be consistent with the location of the facility at that finalist site. The proposal must be made in writing by the date of:

(i) The second hearing under RCW 71.09.315(2)(a) when there are three finalist sites; or

(ii) The first hearing under RCW 71.09.315(2)(b) when there is only one site under consideration.

(b) The department shall respond to the city or county in writing within fifteen business days of receiving the proposed measures. The response shall address all proposed measures.

(c) If the city or county finds that the department's response is inadequate, the city or county may notify the department in writing within fifteen business days of the specific items which it finds inadequate. If the city or county does not notify the department of a finding that the response is inadequate within fifteen business days, the department's response shall be final.

(d) If the city or county notifies the department that it finds the response inadequate and the department does not revise its response to the satisfaction of the city or county within seven business days, the city or county may petition the governor to designate a person with law enforcement expertise to review the response under RCW 34.05.479.

(e) The governor's designee shall hear a petition filed under this subsection and shall make a determination within thirty days of hearing the petition. The governor's designee shall consider the department's response, and the effectiveness and cost of the proposed measures, in relation to the purposes of this chapter. The determination by the governor's designee shall be final and may not be the basis for any cause of action in civil court.

(f) The city or county shall bear the cost of the petition to the governor's designee. If the city or county prevails on all issues, the department shall reimburse the city or county costs incurred, as provided under chapter 34.05 RCW.

(g) Neither the department's consideration and response to public safety conditions proposed by a city or county nor the decision of the governor's designee shall affect the preemption under this section or the department's authority to site, construct, renovate, occupy, and operate the secure community transition facility at that finalist site or at any finalist site.

(6) Until June 30, 2009, the secretary shall site, construct, occupy, and operate a secure community transition facility sited under this section in an environmentally responsible manner that is consistent with the substantive objectives of chapter 43.21C RCW, and shall consult with the department of ecology as appropriate in carrying out the planning, construction, and operations of the facility. The secretary shall make a threshold determination of whether a secure community transition facility sited under this section would have a probable significant, adverse environmental impact. If the secretary determines that the secure community transition facility has such an impact, the secretary shall prepare an environmental impact statement that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the rules promulgated by the department of ecology relating to such statements. Nothing in this subsection shall be the basis for any civil cause of action or administrative appeal.

(7) In no case may a secure community transition facility be sited adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration unless the site that the department has chosen in a particular county or city was identified pursuant to a process for siting secure community transition facilities adopted by that county or city in compliance with RCW 36.70A.200. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(8) This section does not apply to the secure community transition facility established pursuant to RCW 71.09.250(1).

NEW SECTION. Sec. 3. This act applies prospectively only and not retroactively and does not apply to development regulations adopted or amended prior to the effective date of this act.

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 by the Senate March 17, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 51

[Engrossed Senate Bill 5560]

INSTITUTIONS OF HIGHER EDUCATION—ALCOHOL SALES

AN ACT Relating to the prohibition of sales of alcohol on university grounds; adding a new section to chapter 66.44 RCW; and repealing RCW 66.44.190.

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

NEW SECTION. Sec. 1. RCW 66.44.190 (Sales on university grounds prohibited—Exceptions) and 1999 c 281 s 10, 1997 c 321 s 62, 1979 ex.s. c 104 s 1, 1975 1st ex.s. c 68 s 1, 1967 c 21 s 1, 1951 c 120 s 1, 1933 ex.s. c 49 s 1, & 1895 c 75 s 1 are each repealed.

NEW SECTION. Sec. 2. A new section is added to chapter 66.44 RCW to read as follows:

If an institution of higher education chooses to allow the sale of alcoholic beverages on campus, the legislature encourages the institution to feature products produced in the state of Washington.

Passed by the Senate March 7, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 52

[Substitute Senate Bill 5719]

UNLAWFUL FACTORING OF A CREDIT CARD OR PAYMENT CARD TRANSACTION

AN ACT Relating to fraudulent use of a credit card scanning device; amending RCW 9A.56.280 and 9A.56.290; reenacting and amending RCW 9.94A.515 and 9.94A.515; prescribing penalties; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 9A.56.280 and 1993 c 484 s 1 are each amended to read as follows:

As used in RCW 9A.56.280 and 9A.56.290, unless the context requires otherwise:

(1) "Cardholder" means a person to whom a credit card or payment card is issued or a person who otherwise is authorized to use a credit card or payment card.

(2) "Credit card" means a card, plate, booklet, credit card number, credit card account number, or other identifying symbol, instrument, or device that can be used to pay for, or to obtain on credit, goods or services.

(3) "Credit card or payment card transaction" means a sale or other transaction in which a credit card or payment card is used to pay for, or to obtain on credit, goods or services.

(4) "Credit card or payment card transaction record" means a record or evidence of a credit card or payment card transaction, including, without limitation, a paper, sales draft, instrument, or other writing and an electronic or magnetic transmission or record.

(5) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized under state or federal law to do business and accept deposits in Washington.

(6) "Merchant" means ~~((a person authorized by a financial institution to honor or accept credit cards in payment for goods or services.~~

(7)) an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. "Merchant" also means a person who receives from an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

(7) "Payment card" means a credit card, charge card, debit card, stored value card, or any card that is issued to an authorized card user and that allows the user to obtain goods, services, money, or anything else of value from a merchant.

(8) "Person" means an individual, partnership, corporation, trust, or unincorporated association, but does not include a financial institution or its authorized employees, representatives, or agents.

(9) "Reencoder" means an electronic device that places encoded information from a payment card onto a different payment card.

(10) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card.

Sec. 2. RCW 9A.56.290 and 1993 c 484 s 2 are each amended to read as follows:

(1) A person commits the crime of unlawful factoring of a credit card or payment card transaction if the person ~~((, with intent to commit fraud or theft against a cardholder, credit card issuer, or financial institution, causes any such party or parties to suffer actual monetary damages that in the aggregate exceed one thousand dollars, by:~~

~~(a) Presenting):~~

(a) Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card without the permission of the authorized user of the payment card or with the intent to defraud the authorized user, another person, or a financial institution;

(b) Uses a reencoder to place information encoded on a payment card onto a different card without the permission of the authorized issuer of the card from which the information is ~~been~~ reencoded or with the intent to defraud the authorized user, another person, or a financial institution;

~~((c) Presents to or ((depositing)) deposits with, or ((causing)) causes another to present to or deposit with, a financial institution for payment a credit card or payment card transaction record that is not the result of a credit card or payment card transaction between the cardholder and the person;~~

~~((b) Employing, soliciting, or otherwise causing)) (d) Employs, solicits, or otherwise causes~~ a merchant or an employee, representative, or agent of a merchant to present to or deposit with a financial institution for payment a credit card or payment card transaction record that is not the result of a credit card or payment card transaction between the cardholder and the merchant; or

~~((c) Employing, soliciting, or otherwise causing)) (e) Employs, solicits, or otherwise causes~~ another to become a merchant for purposes of engaging in conduct made unlawful by this section.

(2) Normal transactions conducted by or through airline reporting corporation-appointed travel agents or cruise-only travel agents recognized by passenger cruise lines are not considered factoring for the purposes of this section.

(3)(a) Unlawful factoring of a credit card or payment card transaction is a class C felony.

(b) A second or subsequent violation of subsection (1) of this section is a class B felony.

Sec. 3. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 2, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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)
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Controlled Substance Homicide (RCW 69.50.415)
 - Explosive devices prohibited (RCW 70.74.180)

- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 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))
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 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 (when the offender has a criminal history in this state or any other state that includes a sex offense or serious violent offense or the Washington equivalent) (RCW 69.50.401(a)(1)(i))

Possession of Ephedrine or any of its Salts or Isomers or Salts of Isomers, Pseudoephedrine or any of its Salts or Isomers or Salts of Isomers, Pressurized Ammonia Gas, or Pressurized Ammonia Gas Solution 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)

Theft of Ammonia (RCW 69.55.010)

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)

Civil Disorder Training (RCW 9A.48.120)

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 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))

- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (except when the offender has a criminal history in this state or any other state that includes a sex offense or serious violent offense or the Washington equivalent) (RCW 69.50.401(a)(1)(i))
- 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(3)(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)
 - Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(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 74.34.145)
- 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)
- 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 I (RCW 9A.76.070)
- Sexual Misconduct with a Minor I (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)

Assault 2 (RCW 9A.36.021)
Assault by Watercraft (RCW
79A.60.060)
Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
Cheating 1 (RCW 9.46.1961)
Commercial Bribery (RCW 9A.68.060)
Counterfeiting (RCW 9.16.035(4))
Endangerment with a Controlled
Substance (RCW 9A.42.100)
Escape 1 (RCW 9A.76.110)
Hit and Run—Injury (RCW
46.52.020(4)(b))
Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))
Identity Theft 1 (RCW 9.35.020(2)(a))
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)

Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(3)(b))

Use of Proceeds of Criminal Profiteering
(RCW 9A.82.080 (1) and (2))

Vehicular Assault, by being under the
influence of intoxicating liquor or
any drug, or by the operation or
driving of a vehicle in a reckless
manner (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(3)(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)
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)

- 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)
 - Identity Theft 2 (RCW 9.35.020(2)(b))
 - Improperly Obtaining Financial Information (RCW 9.35.010)
 - 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 factoring of a credit card or payment card transaction (RCW 9A.56.290(3)(a))
 - 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 2 (RCW 9A.56.070(2))
 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. 4. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 7, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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 I (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))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))
 - 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)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution I (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - 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)
 - Civil Disorder Training (RCW 9A.48.120)
 - 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 79A.60.050)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
 - Introducing Contraband 1 (RCW 9A.76.140)
 - 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(3)(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))
 - Rape of a Child 3 (RCW 9A.44.079)
 - Theft of a Firearm (RCW 9A.56.300)
 - Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(b))
 - Child Molestation 3 (RCW 9A.44.089)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
 - 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 74.34.145)
 - 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)

- 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)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2)(a))
- 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)
- 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)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(3)(b))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)
- 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)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- 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 2I.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))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- 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))

- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(2)(b))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- 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 factoring of a credit card or payment card transaction (RCW 9A.56.290(3)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- 1 Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.070(2))
- 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)

NEW SECTION. Sec. 5. Section 3 of this act expires July 1, 2004.

NEW SECTION. Sec. 6. Section 4 of this act takes effect July 1, 2004.

Passed by the Senate March 13, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 53

[Senate Bill 5758]

CRIMINAL STATUTES—TECHNICAL REORGANIZATION

AN ACT Relating to technical reorganization of criminal statutes to simplify citation to offenses; amending RCW 2.48.180, 3.50.440, 4.24.320, 7.40.230, 9.05.030, 9.05.060, 9.08.065, 9.08.070, 9.16.080, 9.18.120, 9.18.130, 9.24.020, 9.24.030, 9.24.050, 9.26A.110, 9.35.020, 9.40.100, 9.40.120, 9.41.040, 9.41.042, 9.41.050, 9.45.020, 9.45.124, 9.45.126, 9.45.210, 9.45.220, 9.46.155, 9.46.215, 9.47.090, 9.47.120, 9.61.160, 9.61.230, 9.62.010, 9.68.060, 9.68A.090, 9.68A.150, 9.81.020, 9.81.030, 9.82.010, 9.86.020, 9.86.030, 9.91.140, 9.91.170, 9.94.010, 9.94.030, 9.94A.518, 9.94A.533, 9.94A.550, 9.94A.605, 9.94A.610, 9.94A.734, 9A.20.021, 9A.36.021, 9A.40.030, 9A.40.070, 9A.44.100, 9A.44.130, 9A.46.020, 9A.48.090, 9A.56.070, 9A.56.080, 9A.56.085, 9A.56.096, 9A.60.040, 9A.64.020, 9A.64.030, 9A.76.023, 9A.76.070, 9A.76.080, 9A.82.050, 9A.82.060, 9A.82.080, 9A.82.160, 9A.84.010, 9A.88.010, 10.66.090, 10.79.015, 10.79.040, 10.95.020, 13.40.070, 13.40.160, 13.40.193, 13.40.265, 14.20.020, 15.21.060, 15.24.200, 15.26.300, 15.30.250, 15.60.055, 15.61.050, 15.80.650, 16.52.015, 16.52.190, 16.52.193, 16.52.200, 16.52.230, 16.58.170, 16.65.440, 17.10.350, 17.21.310, 17.24.100, 18.04.370, 18.06.130, 18.06.140, 18.08.460, 18.32.675, 18.32.745, 18.32.755, 18.39.215, 18.39.217, 18.39.220, 18.39.231, 18.57.160, 18.64.045, 18.64.046, 18.64.047, 18.64.246, 18.64.270, 18.71.190, 18.92.230, 18.130.075, 18.130.190, 19.09.275, 19.25.020, 19.25.030, 19.25.040, 19.48.110, 19.68.010, 19.76.110, 19.86.145, 19.100.210, 19.105.480, 19.105.520, 19.110.120, 19.110.160, 19.116.080, 19.146.050, 19.146.110, 19.158.160, 20.01.482, 20.01.490, 21.20.400, 21.30.140, 24.06.465, 26.04.210, 28A.405.040, 28A.635.050, 28A.635.090, 28A.635.100, 28B.10.570, 28B.10.571, 28B.10.572, 28B.20.320, 28B.85.030, 29.04.120, 29.15.100, 29.15.110, 29.36.370, 29.51.200, 29.51.230, 29.79.440, 29.82.170, 30.04.240, 30.04.260, 30.12.090, 30.12.100, 30.12.120, 30.42.290, 30.44.110, 30.44.120, 31.12.724, 31.12.850, 32.04.100, 32.04.110, 32.24.080, 33.24.360, 35.32A.090, 35.36.040, 35A.36.040, 36.18.170, 36.28.060, 36.29.060, 36.32.210, 36.68.080, 36.69.180, 36.71.060, 36.75.130, 38.32.090, 38.32.120, 38.52.150, 39.44.101, 39.62.040, 40.16.010, 40.16.020, 40.16.030, 41.26.062, 41.32.055, 42.20.070, 42.20.090, 43.01.100, 43.06.220, 43.06.230, 43.08.140, 43.09.165, 43.19.1939, 43.22.300, 43.22.340, 43.30.310, 43.43.856, 43.70.185, 46.08.170, 46.09.130, 46.10.130, 46.12.070, 46.12.210, 46.12.220, 46.16.010, 46.44.175, 46.44.180, 46.52.010, 46.52.090, 46.55.020, 46.61.015, 46.61.020, 46.61.685, 46.64.010, 46.68.010, 46.70.021, 46.72.100, 46.72A.060, 46.72A.070, 46.80.020, 46.80.190, 46.87.260, 46.87.290, 47.36.180, 47.36.200, 47.36.250, 47.38.010, 47.41.070, 47.52.120, 47.68.233, 47.68.234, 47.68.240, 47.68.255, 48.06.030, 48.06.190, 48.17.480, 48.30.230, 48.30A.015, 48.31.105, 49.12.410, 49.28.010, 49.28.080,

49.28.100, 49.44.100, 49.44.120, 50.36.010, 50.36.020, 50.40.010, 51.48.040, 51.48.103, 51.48.280, 51.52.120, 53.08.220, 53.34.190, 61.12.030, 64.36.020, 64.36.210, 65.12.730, 65.12.740, 65.12.750, 65.12.760, 66.20.200, 66.28.200, 66.28.210, 66.28.220, 66.44.120, 66.44.180, 66.44.290, 67.24.010, 67.70.120, 67.70.130, 67.70.140, 68.28.060, 68.50.100, 68.50.140, 68.50.145, 68.50.150, 68.50.250, 68.50.610, 68.56.040, 69.04.060, 69.04.070, 69.07.150, 69.25.150, 69.25.160, 69.40.020, 69.40.030, 69.41.030, 69.41.040, 69.41.050, 69.41.070, 69.41.300, 69.41.320, 69.41.330, 69.50.402, 69.50.403, 69.50.406, 69.50.408, 69.50.410, 69.50.415, 69.50.416, 69.50.430, 69.50.440, 69.50.505, 69.90.020, 70.05.120, 70.54.090, 70.54.160, 70.58.280, 70.74.180, 70.94.430, 70.95D.100, 70.105.085, 70.106.140, 70.108.130, 70.110.040, 70.111.030, 70.122.090, 70.127.020, 72.23.170, 72.23.300, 74.08.055, 74.08.100, 74.08.331, 76.12.140, 76.36.035, 76.36.110, 76.36.120, 76.48.120, 77.15.194, 77.15.196, 77.15.198, 78.12.061, 79.01.072, 79.01.748, 79.01.810, 79.76.290, 79A.05.165, 80.28.190, 80.28.210, 81.04.390, 81.40.010, 81.40.040, 81.40.060, 81.40.080, 81.40.130, 81.44.085, 81.54.030, 81.56.150, 81.60.070, 81.60.080, 81.64.090, 81.64.160, 81.68.080, 82.08.0273, 82.08.050, 82.36.330, 82.36.400, 82.44.120, 82.45.090, 82.49.065, 82.50.170, 84.08.050, 84.36.387, 84.40.120, 84.40.340, 87.03.200, 87.03.490, 88.02.055, 88.02.118, 88.08.020, 88.08.050, 88.46.080, 90.03.400, 90.48.140, and 90.56.300; reenacting and amending RCW 9.94A.030, 9.94A.515, 9A.46.110, 9A.82.010, 13.40.0357, 18.64.245, 69.41.020, 69.50.401, and 69.50.435; adding new sections to chapter 9.08 RCW; adding a new section to chapter 9.26A RCW; adding a new section to chapter 9.40 RCW; adding new sections to chapter 9.91 RCW; adding new sections to chapter 9A.56 RCW; adding a new section to chapter 9A.60 RCW; adding a new section to chapter 9A.82 RCW; adding a new section to chapter 19.76 RCW; adding a new section to chapter 19.110 RCW; adding a new section to chapter 69.25 RCW; adding new sections to chapter 69.41 RCW; adding new sections to chapter 69.50 RCW; creating a new section; recodifying RCW 69.41.070; repealing RCW 9.16.090, 9.18.140, 9.45.230, 9.61.170, 9.61.180, 9.68A.140, 9.68A.160, 9.86.050, 9.94.020, 10.79.045, 16.52.195, 18.06.150, 18.64.247, 26.04.230, 28A.405.050, 28A.635.120, 28B.10.573, 28B.20.322, 28B.20.324, 28B.85.110, 29.51.215, 33.24.380, 36.28.070, 36.28.080, 36.28.140, 36.29.070, 36.32.215, 36.32.220, 36.32.225, 36.32.230, 36.75.140, 36.75.150, 43.01.110, 43.22.345, 47.36.210, 47.36.220, 47.36.230, 47.38.030, 48.30A.025, 49.28.020, 49.28.030, 49.28.082, 49.28.084, 49.28.110, 49.44.110, 49.44.130, 61.12.031, 64.36.230, 66.28.250, 66.44.291, 68.50.260, 69.90.040, 70.54.100, 70.54.170, 70.110.060, 70.111.050, 70.127.210, 78.12.062, 81.40.030, 81.40.050, 81.40.070, 81.40.090, 81.40.120, 81.40.140, 81.60.090, 81.64.100, 81.64.110, and 81.64.170; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature intends by this act to reorganize criminal provisions throughout the Revised Code of Washington to clarify and simplify the identification and referencing of crimes. It is not intended that this act effectuate any substantive change to any criminal provision in the Revised Code of Washington.

Sec. 2. RCW 2.48.180 and 2001 c 310 s 2 are each amended to read as follows:

(1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.

(b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred.

Sec. 3. RCW 3.50.440 and 1984 c 258 s 120 are each amended to read as follows:

Every person convicted by the municipal court of a violation of the criminal provisions of an ordinance for which no punishment is specifically prescribed in the ordinance is guilty of a gross misdemeanor and shall be punished by a fine of

not more than five thousand dollars or imprisonment in the city jail for a period not to exceed one year, or both such fine and imprisonment.

Sec. 4. RCW 4.24.320 and 1979 c 145 s 1 are each amended to read as follows:

Any person who suffers damages as a result of actions described in RCW 9A.48.080(c) or any owner of a horse, mule, cow, heifer, bull, steer, swine, or sheep who suffers damages as a result of a willful, unauthorized act described in RCW 9A.56.080 or section 75 of this act may bring an action against the person or persons committing the act in a court of competent jurisdiction for exemplary damages up to three times the actual damages sustained, plus attorney's fees.

Sec. 5. RCW 7.40.230 and 1990 c 11 s 4 are each amended to read as follows:

(1) Whenever it appears that any person is engaged in or about to engage in any act that constitutes or will constitute a violation of RCW 9.26A.110, section 21 of this act, or 9.26A.090, the prosecuting attorney, a telecommunications company, or any person harmed by an alleged violation of RCW 9.26A.110, section 21 of this act, or 9.26A.090 may initiate a civil proceeding in superior court to enjoin such violation, and may petition the court to issue an order for the discontinuance of the specific telephone service being used in violation of RCW 9.26A.110, section 21 of this act, or 9.26A.090.

(2) An action under this section shall be brought in the county in which the unlawful act or acts are alleged to have taken place, and shall be commenced by the filing of a verified complaint, or shall be accompanied by an affidavit.

(3) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or about to engage in any act that constitutes a violation of RCW 9.26A.110, section 21 of this act, or 9.26A.090, the court may issue a temporary restraining order to abate and prevent the continuance or recurrence of the act. The court may direct the sheriff to seize and retain until further order of the court any device that is being used in violation of RCW 9.26A.110, section 21 of this act, or 9.26A.090. All property seized pursuant to the order of the court shall remain in the custody of the court.

(4) The court may issue a permanent injunction to restrain, abate or prevent the continuance or recurrence of the violation of RCW 9.26A.110, section 21 of this act, or 9.26A.090. The court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction. The court may retain jurisdiction of the case for the purpose of enforcing its orders.

(5) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or is about to engage in any act that constitutes a violation of RCW 9.26A.110, section 21 of this act, or 9.26A.090, the court may issue an order which shall be promptly served upon the person in whose name the telecommunications device is listed, requiring the party, within a reasonable time, to be fixed by the court, from the time of service of the petition on ~~((said))~~ the party, to show cause before the judge why telephone service should not promptly be discontinued. At the hearing the burden of proof shall be on the complainant.

(6) Upon a finding by the court that the telecommunications device is being used or has been used in violation of RCW 9.26A.110 or section 21 of this act,

the court may issue an order requiring the telephone company which is rendering service over the device to disconnect such service. Upon receipt of such order, which shall be served upon an officer of the telephone company by the sheriff or deputy of the county in which the telecommunications device is installed, the telephone company shall proceed promptly to disconnect and remove such device and discontinue all telephone service until further order of the court, provided that the telephone company may do so without breach of the peace or trespass.

(7) The telecommunications company that petitions the court for the removal of any telecommunications device under this section shall be a necessary party to any proceeding or action arising out of or under RCW 9.26A.110 or section 21 of this act.

(8) No telephone company shall be liable for any damages, penalty, or forfeiture, whether civil or criminal, for any legal act performed in compliance with any order issued by the court.

(9) Property seized pursuant to the direction of the court that the court has determined to have been used in violation of RCW 9.26A.110 or section 21 of this act shall be forfeited after notice and hearing. The court may remit or mitigate the forfeiture upon terms and conditions as the court deems reasonable if it finds that such forfeiture was incurred without gross negligence or without any intent of the petitioner to violate the law, or it finds the existence of such mitigating circumstances as to justify the remission or the mitigation of the forfeiture. In determining whether to remit or mitigate forfeiture, the court shall consider losses that may have been suffered by victims as the result of the use of the forfeited property.

Sec. 6. RCW 9.05.030 and 1999 c 191 s 1 are each amended to read as follows:

Whenever two or more persons assemble for the purpose of committing criminal sabotage, as defined in RCW 9.05.060, such an assembly is unlawful, and every person voluntarily and knowingly participating therein by his or her presence, aid, or instigation, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Sec. 7. RCW 9.05.060 and 1999 c 191 s 2 are each amended to read as follows:

(1) Whoever, with intent that his or her act shall, or with reason to believe that it may, injure, interfere with, interrupt, supplant, nullify, impair, or obstruct the owner's or operator's management, operation, or control of any agricultural, stockraising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile, or building enterprise, or any other public or private business or commercial enterprise, wherein any person is employed for wage, shall willfully damage or destroy, or attempt or threaten to damage or destroy, any property whatsoever, or shall unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property, instrumentality, machine, mechanism, or appliance used in such business or enterprise, shall be guilty of criminal sabotage.

(2) Criminal sabotage is a class B felony punishable according to chapter 9A.20 RCW.

Sec. 8. RCW 9.08.065 and 1989 c 359 s 1 are each amended to read as follows:

As used in RCW 9.08.070 and sections 10 through 13 of this act:

(1) "Pet animal" means a tamed or domesticated animal legally retained by a person and kept as a companion. "Pet animal" does not include livestock raised for commercial purposes.

(2) "Research institution" means a facility licensed by the United States department of agriculture to use animals in biomedical or product research.

(3) "U.S.D.A. licensed dealer" means a person who is licensed or required to be licensed by the United States department of agriculture to commercially buy, receive, sell, negotiate for sale, or transport animals.

Sec. 9. RCW 9.08.070 and 1989 c 359 s 2 are each amended to read as follows:

(1) Any person who, with intent to deprive or defraud the owner thereof, does any of the following shall be guilty of a gross misdemeanor (~~and shall be punished as prescribed under RCW 9A.20.021(2))~~ punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than five hundred dollars per pet animal, except as provided by (~~((d) of this))~~ subsection (2) of this section:

(a) Takes, leads away, confines, secretes or converts any pet animal, except in cases in which the value of the pet animal exceeds two hundred fifty dollars;

(b) Conceals the identity of any pet animal or its owner by obscuring, altering, or removing from the pet animal any collar, tag, license, tattoo, or other identifying device or mark((-);

(c) Willfully or recklessly kills or injures any pet animal, unless excused by law.

~~((d))~~ (2) Nothing in this (~~(subsection or subsection (2) of this))~~ section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property.

~~((2)(a) It is unlawful for any person to receive with intent to sell to a research institution in the state of Washington, or sell or otherwise directly transfer to a research institution in the state of Washington, a pet animal that the person knows or has reason to know has been stolen or fraudulently obtained. This subsection does not apply to U.S.D.A. licensed dealers.~~

~~(b) The first conviction under (a) of this subsection is a gross misdemeanor and is punishable as prescribed under RCW 9A.20.021(2) and by a mandatory fine of not less than five hundred dollars per pet animal. A second or subsequent conviction under (a) of this subsection is a class C felony and is punishable as prescribed under RCW 9A.20.021(1)(e) and by a mandatory fine of not less than one thousand dollars per pet animal.~~

~~(3)(a) It is unlawful for any person, who knows or has reason to know that a pet animal has been stolen or fraudulently obtained, to sell or otherwise transfer the pet animal to another who the person knows or has reason to know has previously sold a stolen or fraudulently obtained pet animal to a research institution in the state of Washington.~~

~~(b) A conviction under (a) of this subsection is a class C felony and shall be punishable as prescribed under RCW 9A.20.021(1)(e) and by a mandatory fine of not less than one thousand dollars per pet animal.~~

~~(4)(a) It is unlawful for a U.S.D.A. licensed dealer to receive with intent to sell, or sell or transfer directly or through a third party, to a research institution in the state of Washington, a pet animal that the dealer knows or has reason to know has been stolen or fraudulently obtained.~~

~~(b) A conviction under (a) of this subsection is a class C felony and shall be punishable as prescribed under RCW 9A.20.021(1)(e) and by a mandatory fine of not less than one thousand dollars per pet animal.~~

~~(5) The sale, receipt, or transfer of each individual pet animal in violation of subsections (1), (2), (3), and (4) of this section constitutes a separate offense.~~

~~(6) The provisions of subsections (1), (2), (3), and (4) of this section shall not apply to the lawful acts of any employee, agent, or director of any humane society, animal control agency, or animal shelter operated by or on behalf of any government agency, operating under law.)~~

NEW SECTION. Sec. 10. A new section is added to chapter 9.08 RCW to read as follows:

(1) It is unlawful for any person to receive with intent to sell to a research institution in the state of Washington, or sell or otherwise directly transfer to a research institution in the state of Washington, a pet animal that the person knows or has reason to know has been stolen or fraudulently obtained. This section does not apply to U.S.D.A. licensed dealers.

(2) The first conviction under this section is a gross misdemeanor punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than five hundred dollars per pet animal.

(3) A second or subsequent conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal.

(4) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property.

NEW SECTION. Sec. 11. A new section is added to chapter 9.08 RCW to read as follows:

(1) It is unlawful for any person, who knows or has reason to know that a pet animal has been stolen or fraudulently obtained, to sell or otherwise transfer the pet animal to another who the person knows or has reason to know has previously sold a stolen or fraudulently obtained pet animal to a research institution in the state of Washington.

(2) A conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal.

NEW SECTION. Sec. 12. A new section is added to chapter 9.08 RCW to read as follows:

(1) It is unlawful for a U.S.D.A. licensed dealer to receive with intent to sell, or sell or transfer directly or through a third party, to a research institution in the state of Washington, a pet animal that the dealer knows or has reason to know has been stolen or fraudulently obtained.

(2) A conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal.

NEW SECTION. Sec. 13. A new section is added to chapter 9.08 RCW to read as follows:

(1) The sale, receipt, or transfer of each individual pet animal in violation of RCW 9.08.070 or sections 10 through 12 of this act constitutes a separate offense.

(2) The provisions of RCW 9.08.070 or sections 10 through 12 of this act shall not apply to the lawful acts of any employee, agent, or director of any humane society, animal control agency, or animal shelter operated by or on behalf of any government agency, operating under law.

Sec. 14. RCW 9.16.080 and 1927 c 222 s 1 are each amended to read as follows:

(1) It shall be unlawful for any person, firm, or corporation:

~~((1))~~ (a) To use, adopt, place upon, or permit to be used, adopted or placed upon, any barrel, tank, drum or other container of gasoline or lubricating oil for internal combustion engines, sold or offered for sale, or upon any pump or other device used in delivering the same, any trade name, trademark, designation or other descriptive matter, which is not the true and correct trade name, trademark, designation or other descriptive matter of the gasoline or lubricating oil so sold or offered for sale;

~~((2))~~ (b) To sell, or offer for sale, or have in his or her or its possession with intent to sell, any gasoline or lubricating oil, contained in, or taken from, or through any barrel, tank, drum, or other container or pump or other device, so unlawfully labeled or marked, as hereinabove provided;

~~((3))~~ (c) To sell, or offer for sale, or have in his or her or its possession with intent to sell any gasoline or lubricating oil for internal combustion engines and to represent to the purchaser, or prospective purchaser, that such gasoline or lubricating oil so sold or offered for sale, is of a quality, grade or standard, or the product of a particular gasoline or lubricating oil manufacturing, refining or distributing company or association, other than the true quality, grade, standard, or the product of a particular gasoline or oil manufacturing, refining or distributing company or association, of the gasoline or oil so offered for sale or sold.

(2)(a) Except as provided in (b) of this subsection, any person, firm, or corporation violating this section is guilty of a misdemeanor.

(b) A second and each subsequent violation of this section is a gross misdemeanor.

Sec. 15. RCW 9.18.120 and 1921 c 12 s 1 are each amended to read as follows:

(1) When any competitive bid or bids are to be or have been solicited, requested, or advertised for by the state of Washington, or any county, city, town or other municipal corporation therein, or any department of either thereof, for any work or improvement to be done or constructed for or by such state, county, city, town, or other municipal corporation, or any department of either thereof, it shall be unlawful for any person acting for himself or herself or as agent of another, or as agent for or as a member of any partnership, unincorporated firm

or association, or as an officer or agent of any corporation, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another or to any firm, association, or corporation for the purpose of inducing such other person, firm, association, or corporation, either to refrain from submitting any bids upon such public work or improvement, or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept, or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he or she individually or as an agent or officer of another person, persons, or corporation, will refrain from bidding upon such public work or improvement, or that he or she will on behalf of himself or herself or such others submit or permit another to submit for him or her any bid upon such public work or improvement in such sum as to eliminate full and unrestricted competition thereon.

(2) A person violating this section is guilty of a gross misdemeanor.

Sec. 16. RCW 9.18.130 and 1921 c 12 s 2 are each amended to read as follows:

(1) It shall be unlawful for any person for himself or herself or as an agent or officer of any other person, persons, or corporation to in any manner enter into collusion or an understanding with any other person, persons, or corporation to prevent or eliminate full and unrestricted competition upon any public work or improvement mentioned in RCW 9.18.120.

(2) A person violating this section is guilty of a gross misdemeanor.

Sec. 17. RCW 9.24.020 and 1992 c 7 s 5 are each amended to read as follows:

Every officer, agent or other person in the service of a joint stock company or corporation, domestic or foreign, who, willfully and knowingly with intent to defraud:

(1) Sells, pledges, or issues, or causes to be sold, pledged, or issued, or signs or executes, or causes to be signed or executed, with intent to sell, pledge, or issue, or cause to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate or evidence of ownership of any share or shares of such company or corporation, or any conveyance or encumbrance of real or personal property, contract, bond, or evidence of debt, or writing purporting to be a conveyance or encumbrance of real or personal property, contract, bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which such company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

(2) Reissues, sells, pledges, disposes of, or causes to be reissued, sold, pledged, or disposed of, any surrendered or canceled certificate or other evidence of the transfer of ownership of any such share or shares

is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

Sec. 18. RCW 9.24.030 and 1992 c 7 s 6 are each amended to read as follows:

Every owner, officer, stockholder, agent or employee of any person, firm, corporation or association engaged, wholly or in part, in the business of banking or receiving money or negotiable paper or securities on deposit or in trust, who shall accept or receive, with or without interest, any deposit, or who shall consent thereto or connive thereat, when he or she knows or has good reason to believe that such person, firm, corporation or association is unsafe or insolvent, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than ten thousand dollars.

Sec. 19. RCW 9.24.050 and 1992 c 7 s 7 are each amended to read as follows:

Every director, officer or agent of any corporation or joint stock association, and every person engaged in organizing or promoting any enterprise, who shall knowingly make or publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars.

Sec. 20. RCW 9.26A.110 and 1990 c 11 s 2 are each amended to read as follows:

(1) Every person who, with intent to evade the provisions of any order or rule of the Washington utilities and transportation commission or of any tariff, price list, contract, or any other filing lawfully submitted to ~~((said))~~ the commission by any telephone, telegraph, or telecommunications company, or with intent to defraud, obtains telephone, telegraph, or telecommunications service from any telephone, telegraph, or telecommunications company through: (a) The use of a false or fictitious name or telephone number; (b) the unauthorized use of the name or telephone number of another; (c) the physical or electronic installation of, rearrangement of, or tampering with any equipment, or use of a telecommunications device; (d) the commission of computer trespass; or (e) any other trick, deceit, or fraudulent device, ~~((shall be))~~ is guilty of a misdemeanor.

(2) If the value of the telephone, telegraph, or telecommunications service that any person obtains in violation of this section during a period of ninety days exceeds ~~((a))~~ fifty dollars in the aggregate, then such person ~~((shall be))~~ is guilty of a gross misdemeanor ~~((;)).~~

~~((b))~~ (3) If the value of the telephone, telegraph, or telecommunications service that any person obtains in violation of this section during a period of ninety days exceeds two hundred fifty dollars in the aggregate, then such person ~~((shall be))~~ is guilty of a class C felony punishable according to chapter 9A.20 RCW.

~~((However,))~~ (4) For any act that constitutes a violation of both this ~~((subsection))~~ section and ~~((subsection (2) of this))~~ section 21 of this act the provisions of ~~((subsection (2) of this))~~ section 21 of this act shall be exclusive.

~~((2) Every person who:~~

~~(a) Makes, possesses, sells, gives, or otherwise transfers to another a telecommunications device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message; or~~

~~(b) Sells, gives, or otherwise transfers to another plans or instructions for making or assembling a telecommunications device described in subparagraph (a) of this subsection with knowledge or reason to believe that the plans may be used to make or assemble such device shall be guilty of a felony.)~~

NEW SECTION. Sec. 21. A new section is added to chapter 9A.26A RCW to read as follows:

Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who:

(1) Makes, possesses, sells, gives, or otherwise transfers to another a telecommunications device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message; or

(2) Sells, gives, or otherwise transfers to another plans or instructions for making or assembling a telecommunications device described in subsection (1) of this section with knowledge or reason to believe that the plans may be used to make or assemble such device.

Sec. 22. RCW 9.35.020 and 2001 c 217 s 9 are each amended to read as follows:

(1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2)~~((a))~~ Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

~~((b))~~ (3) Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services, or anything else of value that is less than one thousand five hundred dollars in value, or when no credit, money, goods, services, or anything of value is obtained shall constitute identity theft in the second degree. Identity theft in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

~~((c))~~ (4) A person who violates this section is liable for civil damages of five hundred dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court.

~~((d))~~ (5) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any

part of the offense took place, regardless of whether the defendant was ever actually in that locality.

~~((5))~~ (6) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

~~((6))~~ (7) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section.

Sec. 23. RCW 9.40.100 and 1995 c 369 s 3 are each amended to read as follows:

~~((4))~~ Any person who willfully and without cause tampers with, molests, injures or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any fire fighting equipment, or who willfully and without having reasonable grounds for believing a fire exists, sends, gives, transmits, or sounds any false alarm of fire, by shouting in a public place or by means of any public or private fire alarm system or signal, or by telephone, is guilty of a misdemeanor. This provision shall not prohibit the testing of fire alarm systems by persons authorized to do so, by a fire department or the chief of the Washington state patrol, through the director of fire protection.

~~((2) Any person who willfully and without cause tampers with, molests, injures, or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any fire fighting equipment with the intent to commit arson, is guilty of a felony.))~~

NEW SECTION. Sec. 24. A new section is added to chapter 9.40 RCW to read as follows:

Any person who willfully and without cause tampers with, molests, injures, or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any fire fighting equipment with the intent to commit arson, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 25. RCW 9.40.120 and 1999 c 352 s 5 are each amended to read as follows:

Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a class B felony punishable according to chapter 9A.20 RCW, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than ten years.

Sec. 26. RCW 9.41.040 and 1997 c 338 s 47 are each amended to read as follows:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not

qualify under ~~((a) of this)~~ subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under ~~((a) of this)~~ subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

~~((2)(a) Unlawful possession of a firearm in the first degree is a class B felony, punishable under chapter 9A.20 RCW.~~

~~(b) Unlawful possession of a firearm in the second degree is a class C felony, punishable under chapter 9A.20 RCW.)~~

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4) Notwithstanding subsection (1) or (2) of this section, a person convicted of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401~~((a))~~ and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction. Notwithstanding any other provisions of this

section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.047; and/or

(b)(i) If the conviction was for a felony offense, after five or more consecutive years in the community without being convicted or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(ii) If the conviction was for a nonfelony offense, after three or more consecutive years in the community without being convicted or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

Sec. 27. RCW 9.41.042 and 1999 c 143 s 2 are each amended to read as follows:

RCW 9.41.040(~~(1)(b))~~ (2)(a)(iii) shall not apply to any person under the age of eighteen years who is:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;

(4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;

(5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;

(6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;

(7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;

(8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty.

Sec. 28. RCW 9.41.050 and 1997 c 200 s 1 are each amended to read as follows:

(1)(a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (1)(b) shall be a class 1 civil infraction under chapter 7.80 RCW and shall be punished accordingly pursuant to chapter 7.80 RCW and the infraction rules for courts of limited jurisdiction.

(2)(a) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: ~~((b))~~ (i) The pistol is on the licensee's person, ~~((b))~~ (ii) the licensee is within the vehicle at all times that the pistol is there, or ~~((c))~~ (iii) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(3)(a) A person at least eighteen years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(4) ~~((Violation of any of the prohibitions of subsections (2) and (3) of this section is a misdemeanor.~~

~~((5))~~ Nothing in this section permits the possession of firearms illegal to possess under state or federal law.

Sec. 29. RCW 9.45.020 and 1992 c 7 s 9 are each amended to read as follows:

Every person to whom a child has been confided for nursing, education or any other purpose, who, with intent to deceive a person, guardian or relative of such child, shall substitute or produce to such parent, guardian or relative, another child or person in the place of the child so confided, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years.

Sec. 30. RCW 9.45.124 and 1992 c 7 s 11 are each amended to read as follows:

Every person, corporation, or association whether profit or nonprofit, who shall ask or receive, or conspire to ask or receive, directly or indirectly, any compensation, gratuity, or reward or any promise thereof, on any agreement or understanding that he or she shall (1) intentionally make an inaccurate visual or mechanical measurement or an intentionally inaccurate recording of any visual or mechanical measurement of goods, raw materials, and agricultural products (whether severed or unsevered from the land) which he or she has or will have the duty to measure, or shall (2) intentionally change, alter or affect, for the purpose of making an inaccurate measurement, any equipment or other device which is designed to measure, either qualitatively or quantitatively, such goods, raw materials, and agricultural products, or shall intentionally alter the recordation of such measurements, (~~shall be~~) is guilty of a class B felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Sec. 31. RCW 9.45.126 and 1992 c 7 s 12 are each amended to read as follows:

Every person who shall give, offer or promise, or conspire to give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any person, corporation, independent contractor, or agent, employee or servant thereof with intent to violate RCW 9.45.124, (~~shall be~~) is guilty of a class B felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both.

Sec. 32. RCW 9.45.210 and 1890 p 99 s 2 are each amended to read as follows:

Any person who shall interfere with or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong or defraud, (~~shall be deemed~~) is guilty of a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or by a fine of not less than fifty nor more than one thousand dollars, or by both such fine and imprisonment.

Sec. 33. RCW 9.45.220 and 1890 p 99 s 3 are each amended to read as follows:

Any person who shall, with intent to cheat, wrong or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, (~~shall be deemed~~) is guilty of a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or by a fine of not less than fifty nor more than one thousand dollars, or by both such fine and imprisonment.

Sec. 34. RCW 9.46.155 and 1981 c 139 s 15 are each amended to read as follows:

(1) No applicant or licensee shall give or provide, or offer to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any of its agencies or political subdivisions, any compensation or reward, or share of the money or property paid or received through gambling activities, in consideration for obtaining any license, authorization, permission or privilege to participate in any gaming operations except as authorized by this chapter or rules adopted pursuant thereto.

(2) Violation of this section (~~shall be~~) is a class C felony for which a person, upon conviction, shall be punished by imprisonment for not more than five years or a fine of not more than one hundred thousand dollars, or both.

Sec. 35. RCW 9.46.215 and 1994 c 218 s 9 are each amended to read as follows:

(1) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs, or transports any gambling device or offers or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a class C felony and shall be fined not more than one hundred thousand dollars or imprisoned not more than five years or both.

~~((However,))~~ (2) This section does not apply to persons licensed by the commission, or who are otherwise authorized by this chapter, or by commission rule, to conduct gambling activities without a license, respecting devices that are to be used, or are being used, solely in that activity for which the license was issued, or for which the person has been otherwise authorized if:

~~((+))~~ (a) The person is acting in conformance with this chapter and the rules adopted under this chapter; and

~~((2))~~ (b) The devices are a type and kind traditionally and usually employed in connection with the particular activity.

(3) This section also does not apply to any act or acts by the persons in furtherance of the activity for which the license was issued, or for which the person is authorized, when the activity is conducted in compliance with this chapter and in accordance with the rules adopted under this chapter.

(4) In the enforcement of this section direct possession of any such a gambling device is presumed to be knowing possession thereof.

Sec. 36. RCW 9.47.090 and 1992 c 7 s 13 are each amended to read as follows:

Every person, whether in his or her own behalf, or as agent, servant or employee of another person, within or outside of this state, who shall open, conduct or carry on any bucket shop, or make or offer to make any contract described in RCW 9.47.080, or with intent to make such a contract, or assist therein, shall receive, exhibit, or display any statement of market prices of any commodities, securities, or property, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years.

Sec. 37. RCW 9.47.120 and 1992 c 7 s 14 are each amended to read as follows:

Every person who shall entice, or induce another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice or device, is being conducted or operated; or while in such place shall entice or induce another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice, or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan any money or property, or representative of either, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years.

Sec. 38. RCW 9.61.160 and 1977 ex.s. c 231 s 1 are each amended to read as follows:

(1) It shall be unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any governmental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated.

(2) It shall not be a defense to any prosecution under this section that the threatened bombing or injury was a hoax.

(3) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW.

Sec. 39. RCW 9.61.230 and 1992 c 186 s 6 are each amended to read as follows:

(1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

((+)) (a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

((2)) (b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

((3)) (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household;

((shall be)) is guilty of a gross misdemeanor, except ((that the person is guilty of a class C felony if either of the following applies:)) as provided in subsection (2) of this section.

(2) The person is guilty of a class C felony punishable according to chapter 9A.20 RCW if either of the following applies:

(a) That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state; or

(b) That person harasses another person under subsection ((3)) (1)(c) of this section by threatening to kill the person threatened or any other person.

Sec. 40. RCW 9.62.010 and 1992 c 7 s 15 are each amended to read as follows:

Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years; and

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor.

Sec. 4I. RCW 9.68.060 and 1992 c 5 s 2 are each amended to read as follows:

(1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of ~~((said))~~ the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

~~((e))~~ (4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

~~((d))~~ (5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

((+)) (a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

((+)) (b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned not more than one year;

((+)) (c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year.

Sec. 42. RCW 9.68A.090 and 1989 c 32 s 7 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor~~((unless that))~~.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state~~((in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW))~~.

Sec. 43. RCW 9.68A.150 and 1987 c 396 s 2 are each amended to read as follows:

(1) No person may knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing matter which is erotic material.

(2) Any person who is convicted of violating this section is guilty of a gross misdemeanor.

(3) For the purposes of this section:

(a) "Minor" means any person under the age of eighteen years.

(b) "Erotic materials" means live performance:

(i) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors; and

(ii) Which explicitly depicts or describes patently offensive representations or descriptions of sexually explicit conduct as defined in RCW 9.68A.011; and

(iii) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value for minors.

(c) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to, or before an audience of one or more, with or without consideration.

(d) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

Sec. 44. RCW 9.81.020 and 1951 c 254 s 2 are each amended to read as follows:

(1) It ~~((shall be))~~ is a class B felony for any person knowingly and willfully to:

((+)) (a) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction

or alteration of, the constitutional form of the government of the United States, or of the state of Washington or any political subdivision of either of them, by revolution, force or violence; or

~~((2))~~ (b) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of Washington or of any political subdivision of either of them; or

~~((3))~~ (c) Conspire with one or more persons to commit any such act; or

~~((4))~~ (d) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing ~~((said))~~ the organization to be a subversive organization or a foreign subversive organization; or

~~((5))~~ (e) Destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing ~~((said))~~ the organization to be such.

(2) Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than ten thousand dollars, or imprisoned for not more than ten years, or both, at the discretion of the court.

Sec. 45. RCW 9.81.030 and 1951 c 254 s 3 are each amended to read as follows:

It ~~((shall be))~~ is a class C felony for any person after June 1, 1951 to become, or after September 1, 1951, to remain a member of a subversive organization or a foreign subversive organization knowing ~~((said))~~ the organization to be a subversive organization or foreign subversive organization. Any person upon a plea of guilty or upon conviction of violating ~~((any of the provisions of))~~ this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

Sec. 46. RCW 9.82.010 and 1909 c 249 s 65 are each amended to read as follows:

(1) Treason against the people of the state consists in—

~~((1))~~ (a) Levying war against the people of the state, or

~~((2))~~ (b) Adhering to its enemies, or

~~((3))~~ (c) Giving them aid and comfort.

(2) Treason is a class A felony and punishable by death.

(3) No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court.

Sec. 47. RCW 9.86.020 and 1919 c 107 s 2 are each amended to read as follows:

(1) No person shall, in any manner, for exhibition or display:

~~((1))~~ (a) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or of this state; or

~~((2))~~ (b) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

~~((3))~~ (c) Expose to public view for sale, manufacture, or otherwise, or to sell, give, or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance.

(2) A violation of this section is a gross misdemeanor.

Sec. 48. RCW 9.86.030 and 1969 ex.s. c 110 s 1 are each amended to read as follows:

(1) No person shall knowingly cast contempt upon any flag, standard, color, ensign or shield, as defined in RCW 9.86.010, by publicly mutilating, defacing, defiling, burning, or trampling upon ~~((said))~~ the flag, standard, color, ensign or shield.

(2) A violation of this section is a gross misdemeanor.

Sec. 49. RCW 9.91.140 and 1998 c 79 s 1 are each amended to read as follows:

~~((1))~~ A person who sells food stamps obtained through the program established under RCW 74.04.500 or food stamp benefits transferred electronically, or food purchased therewith, is guilty of the following:

(1) A gross misdemeanor ~~((under RCW 9A.20.021))~~ if the value of the stamps, benefits, or food transferred exceeds one hundred dollars ~~((, and is guilty of))~~; or

(2) A misdemeanor ~~((under RCW 9A.20.021))~~ if the value of the stamps, benefits, or food transferred is one hundred dollars or less.

~~((2) A person who purchases, or who otherwise acquires and sells, or who traffics in, food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, is guilty of a class C felony under RCW 9A.20.021 if the face value of the stamps or benefits exceeds one hundred dollars, and is guilty of a gross misdemeanor under RCW 9A.20.021 if the face value of the stamps or benefits is one hundred dollars or less.~~

~~(3) A person who, in violation of 7 U.S.C. Sec. 2024(e), obtains and presents food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, for redemption or causes such stamps or benefits to be presented for redemption through the program established under RCW 74.04.500 is guilty of a class C felony under RCW 9A.20.021.)~~

NEW SECTION. Sec. 50. A new section is added to chapter 9.91 RCW to read as follows:

A person who purchases, or who otherwise acquires and sells, or who traffics in, food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, is guilty of the following:

(1) A class C felony punishable according to chapter 9A.20 RCW if the face value of the stamps or benefits exceeds one hundred dollars; or

(2) A gross misdemeanor if the face value of the stamps or benefits is one hundred dollars or less.

NEW SECTION. Sec. 51. A new section is added to chapter 9.91 RCW to read as follows:

A person who, in violation of 7 U.S.C. Sec. 2024(c), obtains and presents food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, for redemption or causes such stamps or benefits to be presented for redemption through the program established under RCW 74.04.500 is guilty of a class C felony punishable according to chapter 9A.20 RCW.

Sec. 52. RCW 9.91.170 and 2001 c 112 s 2 are each amended to read as follows:

~~((1))~~ (1)(a) Any person who has received notice that his or her behavior is interfering with the use of a dog guide or service animal who continues with reckless disregard to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor ~~((punishable according to chapter 9A.20 RCW)), except ((that for a second or subsequent offense it))~~ as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

~~((2))~~ (2)(a) Any person who, with reckless disregard, allows his or her dog to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor ~~((punishable according to chapter 9A.20 RCW)), except ((that for a second or subsequent offense it))~~ as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

~~((3))~~ (3) Any person who, with reckless disregard, injures, disables, or causes the death of a dog guide or service animal is guilty of a gross misdemeanor ~~((punishable according to chapter 9A.20 RCW)).~~

~~((4))~~ (4) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of a dog guide or service animal is guilty of a gross misdemeanor ~~((punishable according to chapter 9A.20 RCW)).~~

~~((5))~~ (5) Any person who intentionally injures, disables, or causes the death of a dog guide or service animal is guilty of a class C felony punishable according to chapter 9A.20 RCW.

~~((6))~~ (6) Any person who wrongfully obtains or exerts unauthorized control over a dog guide or service animal with the intent to deprive the dog guide or service animal user of his or her dog guide or service animal is guilty of theft in the first degree, RCW 9A.56.030.

~~((7))~~ (7)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the dog guide or service animal user and the dog guide or service animal which arise out of or are related to the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog guide or service animal, the training of a replacement dog guide or service animal, or

retraining of the affected dog guide or service animal and all related veterinary and care expenses; and

(ii) Medical expenses of the dog guide or service animal user, training of the dog guide or service animal user, and compensation for wages or earned income lost by the dog guide or service animal user.

~~((6))~~ (8) Nothing in this section shall affect any civil remedies available for violation of this section.

~~((7))~~ (9) For purposes of this section, the following definitions apply:

(a) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons.

(b) "Service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

(c) "Notice" means a verbal or otherwise communicated warning prescribing the behavior of another person and a request that the person stop their behavior.

(d) "Value" means the value to the dog guide or service animal user and does not refer to cost or fair market value.

Sec. 53. RCW 9.94.010 and 1995 c 314 s 1 are each amended to read as follows:

(1) Whenever two or more inmates of a correctional institution assemble for any purpose, and act in such a manner as to disturb the good order of the institution and contrary to the commands of the officers of the institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot.

(2) Every inmate of a correctional institution who is guilty of prison riot or of voluntarily participating therein by being present at, or by instigating, aiding, or abetting the same, is guilty of a class B felony and shall be punished by imprisonment in a state correctional institution for not less than one year nor more than ten years, which shall be in addition to the sentence being served.

Sec. 54. RCW 9.94.030 and 1995 c 314 s 3 are each amended to read as follows:

Whenever any inmate of a correctional institution shall hold, or participate in holding, any person as a hostage, by force or violence, or the threat thereof, or shall prevent, or participate in preventing an officer of such institution from carrying out his or her duties, by force or violence, or the threat thereof, he or she shall be guilty of a class B felony and upon conviction shall be punished by imprisonment in a state correctional institution for not less than one year nor more than ten years.

Sec. 55. RCW 9.94A.030 and 2002 c 175 s 5 and 2002 c 107 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) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760,

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.

(3) "Commission" means the sentencing guidelines commission.

(4) "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.

(5) "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.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. 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.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "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.

(8) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(9) "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. 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.

(10) "Confinement" means total or partial confinement.

(11) "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.

(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) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(14) "Day fine" means a fine imposed by the sentencing 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) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(16) "Department" means the department of corrections.

(17) "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 restitution 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) "Disposable earnings" means that part of the earnings of an 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.

(19) "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 RCW 9.94A.660.

(20) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (~~((RCW 69.50.401(d)))~~ section 334 of this act) 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.

(21) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), 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.

(23) "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.

(24) "Fine" means 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.

(25) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(26) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(27) "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.

(28) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(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, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
 - (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;
 - (t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;
 - (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.
- (29) "Nonviolent offense" means an offense which is not a violent offense.
- (30) "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.
- (31) "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.

(32) "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.525; 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) any of the following offenses with a finding of sexual motivation: 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; or (C) an attempt to commit any crime listed in this subsection (32)(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 or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (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 (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(33) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(34) "Restitution" means a specific sum of money 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.

(35) "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.

(36) "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.

(37) "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;
- (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.

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; 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.835 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.

(39) "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.

(40) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(41) "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.

(42) "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.

(43) "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.

(44) "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.

(45) "Violent offense" means:

(a) Any of the following felonies:

(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, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; 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.

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 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.

(48) "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.

Sec. 56. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 7, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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))
	Sexually Violent Predator Escape (RCW 9A.76.115)
IX	Assault of a Child 2 (RCW 9A.36.130)
	Explosive devices prohibited (RCW 70.74.180)

- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- 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)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - 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)
 - Civil Disorder Training (RCW 9A.48.120)
 - 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 79A.60.050)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))

- Introducing Contraband 1 (RCW 9A.76.140)
- 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)((~~+~~)))
- 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(3)(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))
 - Rape of a Child 3 (RCW 9A.44.079)
 - Theft of a Firearm (RCW 9A.56.300)
 - Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(b))
 - Child Molestation 3 (RCW 9A.44.089)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Custodial Sexual Misconduct 1 (RCW 9A.44.160)

- 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
74.34.145)
- 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)
- 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)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without
Permission 1 (RCW
9A.56.070(((+))))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW
79A.60.060)
- Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))

- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2)((~~Ⓐ~~)))
- 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)
- 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)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)

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)

Malicious Injury to Railroad Property (RCW 81.60.070)

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(2))

Theft of Livestock 2 ~~((RCW 9A.56.080))~~ section 75 of this act

Trafficking in Stolen Property 2 (section 87 of this act)

- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(~~((1)(b))~~)) (2)
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass I (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(~~((2)(b))~~)) (3)
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- 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))~~)) (5)(a)
- 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)

- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (~~RCW 9A.56.070(2)~~) section 73 of this act
- 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)~~) (5)(b)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Trafficking in Food Stamps (section 50 of this act)
- Unlawful Use of Food Stamps (~~RCW 9.91.140(2) and (3)~~) section 51 of this act
- Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 57. RCW 9.94A.518 and 2002 c 290 s 9 are each amended to read as follows:

TABLE 4

DRUG OFFENSES
INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

- III Any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under RCW 9.94A.602
- Controlled Substance Homicide (RCW 69.50.415)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))

Involving a minor in drug dealing
· ~~((RCW 69.50.401(f)))~~ section 336
of this act)

Manufacture of methamphetamine
(RCW 69.50.401(~~((a)(1)(ii)))~~) (2)(b)

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)

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)

Possession of Ephedrine,
Pseudoephedrine, or Anhydrous
Ammonia with intent to
manufacture methamphetamine
(RCW 69.50.440)

Selling for profit (controlled or
counterfeit) any controlled
substance (RCW 69.50.410)

II Create, deliver, or possess a counterfeit
controlled substance ~~((RCW-
69.50.401(b)))~~ section 332 of this
act)

Deliver or possess with intent to deliver
methamphetamine (RCW
69.50.401(~~((a)(1)(ii)))~~) (2)(b)

Delivery of a material in lieu of a
controlled substance ~~((RCW-
69.50.401(e)))~~ section 333 of this
act)

Maintaining a Dwelling or Place for
Controlled Substances (RCW
69.50.402(~~((a)(6)))~~) (1)(f)

· Manufacture, deliver, or possess with
intent to deliver amphetamine
(RCW 69.50.401(~~((a)(1)(ii)))~~) (2)(b)

Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(~~((a)(1)(i))~~) (2) (a))

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))~~) (2) (c) through (e))

Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))

I Forged Prescription (RCW 69.41.020)

Forged Prescription for a Controlled Substance (RCW 69.50.403)

Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(~~((a)(1)(iii))~~) (2)(c))

Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (~~((RCW 69.50.401(d))~~) section 334 of this act)

Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (~~((RCW 69.50.401(d))~~) section 334 of this act)

Unlawful Use of Building for Drug Purposes (RCW 69.53.010)

Sec. 58. RCW 9.94A.533 and 2002 c 290 s 11 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the 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 seventy-five percent.

(3) The following additional times shall be added to the 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 9A.10.010 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.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 firearm enhancements, the following additional times shall be added to the 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, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, 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.72A.020(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 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. 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 standard sentence range for felony crimes committed after July 23, 1995, 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 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 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, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, 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.728(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 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. 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 standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility 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, 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 standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(~~((a)(i) or (ii))~~) (2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(~~((a)(i) (iii), (iv), and (v))~~) (2) (c), (d), or (e);

(c) Twelve months for offenses committed under ~~((RCW 69.50.401(d))~~) section 334 of this act.

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 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 or 9.94A.605.

(7) An additional two years shall be added to the 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. 59. RCW 9.94A.550 and 1984 c 209 s 23 are each amended to read as follows:

Unless otherwise provided by a statute of this state, on all sentences under this chapter the court may impose fines according to the following ranges:

Class A felonies \$0 - 50,000

Class B felonies \$0 - 20,000

Class C felonies \$0 - 10,000

Sec. 60. RCW 9.94A.605 and 2002 c 134 s 3 are each amended 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 any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution 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. 61. RCW 9.94A.610 and 1996 c 205 s 4 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community placement, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

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

Information regarding 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 inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections 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 inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If 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 of corrections shall send the notices required by this section 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, "serious drug offense" means an offense under RCW 69.50.401(~~((a)(1) (i) or (ii))~~) (2) (a) or (b) or ((b)(1)(i) or (ii)) section 332(2) (a) or (b) of this act.

Sec. 62. RCW 9.94A.734 and 2000 c 28 s 30 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)))~~ section 334 of this act or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this 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.

(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) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

Sec. 63. RCW 9A.20.021 and 1982 c 192 s 10 are each amended to read as follows:

(1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984.

Sec. 64. RCW 9A.36.021 and 2001 2nd sp.s. c 12 s 355 are each amended to read as follows:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony(~~(, except that)~~).

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

Sec. 65. RCW 9A.40.030 and 2001 2nd sp.s. c 12 s 356 are each amended to read as follows:

(1) A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(3)(a) Except as provided in (b) of this subsection, kidnapping in the second degree is a class B felony(~~(, except that)~~).

(b) Kidnapping in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

Sec. 66. RCW 9A.40.070 and 1989 c 318 s 2 are each amended to read as follows:

(1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person

from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person. This subsection shall not apply to a parent's noncompliance with a court-ordered parenting plan.

(2) A parent of a child is guilty of custodial interference in the second degree if: (a) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; or (b) the parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160(3); or (c) if the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

(3) Nothing in subsection (2)(b) of this ~~((subsection))~~ section prohibits conviction of custodial interference in the second degree under subsection (2)(a) or (c) of this ~~((subsection))~~ section in absence of findings of contempt.

(4)(a) The first conviction of custodial interference in the second degree is a gross misdemeanor.

(b) The second or subsequent conviction of custodial interference in the second degree is a class C felony.

Sec. 67. RCW 9A.44.100 and 2001 2nd sp.s. c 12 s 359 are each amended to read as follows:

(1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

(2)(a) Except as provided in (b) of this subsection, indecent liberties is a class B felony~~((, except that))~~.

(b) Indecent liberties by forcible compulsion is a class A felony.

Sec. 68. RCW 9A.44.130 and 2002 c 31 s 1 are each 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. 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 forty-eight hours excluding weekends and holidays 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 weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(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 forty-eight hours excluding weekends and holidays 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:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) 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 or this subsection.

(b) "Kidnapping offense" means: (i) 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; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(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) 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.

(b) If the crime for which the individual was convicted 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) 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.

(b) If the crime for which the individual was convicted 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. 69. RCW 9A.46.020 and 1999 c 27 s 2 are each amended to read as follows:

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor (~~(punishable under chapter 9A.20 RCW, except that the person)~~).

(b) A person who harasses another is guilty of a class C felony if either of the following applies: ~~((a))~~ (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; or ~~((b))~~ (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person.

(3) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

Sec. 70. RCW 9A.46.110 and 1999 c 143 s 35 and 1999 c 27 s 3 are each reenacted and amended to read as follows:

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of

another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5)(a) Except as provided in (b) of this subsection, a person who stalks another person is guilty of a gross misdemeanor (~~except that the person~~).

(b) A person who stalks another is guilty of a class C felony if any of the following applies: ~~((a))~~ (i) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; ~~((b))~~ (ii) the stalking violates any protective order protecting the person being stalked; ~~((c))~~ (iii) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; ~~((d))~~ (iv) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.602, while stalking the person; ~~((e))~~ (v) the stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or community correction's officer, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or ~~((f))~~ (vi) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(b) "Harasses" means unlawful harassment as defined in RCW 10.14.020.

(c) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(d) "Repeatedly" means on two or more separate occasions.

Sec. 71. RCW 9A.48.090 and 1996 c 35 s 1 are each amended to read as follows:

(1) A person is guilty of malicious mischief in the third degree if he or she:

(a) Knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree; or

(b) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to malicious mischief in the first or second degree.

(2)(a) Malicious mischief in the third degree under subsection (1)(a) of this section is a gross misdemeanor if the damage to the property is in an amount exceeding fifty dollars(~~(; otherwise, it is a misdemeanor)~~).

(b) Malicious mischief in the third degree under subsection (1)(a) of this section is a misdemeanor if the damage to the property is fifty dollars or less.

(c) Malicious mischief in the third degree under subsection (1)(b) of this section is a gross misdemeanor.

Sec. 72. RCW 9A.56.070 and 2002 c 324 s 1 are each amended to read as follows:

(1)~~((a))~~ A person is guilty of taking a motor vehicle without permission in the first degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:

~~((i))~~ (a) Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;

~~((ii))~~ (b) Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

~~((iii))~~ (c) Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;

~~((iv))~~ (d) Intends to sell the motor vehicle; or

~~((v))~~ (e) Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit.

~~((b))~~ (2) Taking a motor vehicle without permission in the first degree is a class B felony.

~~((2)(a) A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon~~

~~the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.~~

~~(b) Taking a motor vehicle without permission in the second degree is a class C felony.)~~

NEW SECTION. Sec. 73. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

(2) Taking a motor vehicle without permission in the second degree is a class C felony.

Sec. 74. RCW 9A.56.080 and 1986 c 257 s 32 are each amended to read as follows:

(1) Every person who, with intent to sell or exchange and to deprive or defraud the lawful owner thereof, willfully takes, leads, or transports away, conceals, withholds, slaughters, or otherwise appropriates any horse, mule, cow, heifer, bull, steer, swine, or sheep is guilty of theft of livestock in the first degree.

~~(2) ((A person who commits what would otherwise be theft of livestock in the first degree but without intent to sell or exchange, and for the person's own use only, is guilty of theft of livestock in the second degree.~~

~~(3)) Theft of livestock in the first degree is a class B felony.~~

~~((4) Theft of livestock in the second degree is a class C felony.)~~

NEW SECTION. Sec. 75. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person who commits what would otherwise be theft of livestock in the first degree but without intent to sell or exchange, and for the person's own use only, is guilty of theft of livestock in the second degree.

(2) Theft of livestock in the second degree is a class C felony.

Sec. 76. RCW 9A.56.085 and 1989 c 131 s 1 are each amended to read as follows:

(1) Whenever a person is convicted of a violation of RCW 9A.56.080 or section 75 of this act, the convicting court shall order the person to pay the amount of two thousand dollars for each animal killed or possessed.

(2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, or the levying of a fine.

(3) If two or more persons are convicted of any violation of this section, the amount required under this section shall be imposed upon them jointly and severally.

(4) The fine in this section shall be imposed in addition to and regardless of any penalty, including fines or costs, that is provided for any violation of this section. The amount imposed by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. Nothing in this section may be construed to abridge or

alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(5) A defaulted payment or any installment payment may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence.

(6) The two thousand dollars additional penalty shall be remitted by the county treasurer to the state treasurer as provided under RCW 10.82.070.

Sec. 77. RCW 9A.56.096 and 1997 c 346 s 1 are each amended to read as follows:

(1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented or leased to the person, is guilty of theft of rental, leased, or lease-purchased property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

(a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, or lease-purchase agreement; or

(b) That the renter or lessee presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental, lease, or lease-purchase period, mailed by certified or registered mail to the renter or lessee at: (a) The address the renter or lessee gave when the contract was made; or (b) the renter or lessee's last known address if later furnished in writing by the renter, lessee, or the agent of the renter or lessee.

(4) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, or lease-purchased property.

(5)(a) Theft of rental, leased, or lease-purchased property is a ~~a~~(~~:~~) class B felony if the rental, leased, or lease-purchased property is valued at one thousand five hundred dollars or more(~~:~~).

(b) Theft of rental, leased, or lease-purchased property is a class C felony if the rental, leased, or lease-purchased property is valued at two hundred fifty dollars or more but less than one thousand five hundred dollars(~~(and)~~).

(c) Theft of rental, leased, or lease-purchased property is a gross misdemeanor if the rental, leased, or lease-purchased property is valued at less than two hundred fifty dollars.

~~((5))~~ (6) This section applies to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any minimum rental fee, to lease agreements, and to lease-purchase agreements as defined under RCW 63.19.010. This section does not apply to rental or leasing of real property under the residential landlord-tenant act, chapter 59.18 RCW.

Sec. 78. RCW 9A.60.040 and 1993 c 457 s 1 are each amended to read as follows:

(1) A person is guilty of criminal impersonation in the first degree if the person:

(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation in the first degree is a gross misdemeanor.

~~((3) A person is guilty of criminal impersonation in the second degree if the person:~~

~~(a) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and~~

~~(b) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer.~~

~~(4) Criminal impersonation in the second degree is a misdemeanor.))~~

NEW SECTION. Sec. 79. A new section is added to chapter 9A.60 RCW to read as follows:

(1) A person is guilty of criminal impersonation in the second degree if the person:

(a) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and

(b) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer.

(2) Criminal impersonation in the second degree is a misdemeanor.

Sec. 80. RCW 9A.64.020 and 1999 c 143 s 39 are each amended to read as follows:

(1)(a) A person is guilty of incest in the first degree if he or she engages in sexual intercourse with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest in the first degree is a class B felony.

(2)(a) A person is guilty of incest in the second degree if he or she engages in sexual contact with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest in the second degree is a class C felony.

(3) As used in this section~~((;))~~:

(a) "Descendant" includes stepchildren and adopted children under eighteen years of age~~((;~~

~~((4) As used in this section;))~~

(b) "Sexual contact" has the same meaning as in RCW 9A.44.010~~((;~~

~~((5) As used in this section;))~~; and

(c) "Sexual intercourse" has the same meaning as in RCW 9A.44.010.

~~((6) Incest in the first degree is a class B felony.~~

~~(7) Incest in the second degree is a class C felony.))~~

Sec. 81. RCW 9A.64.030 and 1985 c 7 s 3 are each amended to read as follows:

(1) It is unlawful for any person to sell or purchase a minor child.

(2) A transaction shall not be a purchase or sale under subsection (1) of this section if any of the following exists:

(a) The transaction is between the parents of the minor child; or

(b) The transaction is between a person receiving or to receive the child and an agency recognized under RCW 26.33.020; or

(c) The transaction is between the person receiving or to receive the child and a state agency or other governmental agency; or

(d) The transaction is pursuant to chapter 26.34 RCW; or

(e) The transaction is pursuant to court order; or

(f) The only consideration paid by the person receiving or to receive the child is intended to pay for the prenatal hospital or medical expenses involved in the birth of the child, or attorneys' fees and court costs involved in effectuating transfer of child custody.

(3)(a) Child selling is a class C felony ~~((and))~~.

(b) Child buying is a class C felony.

Sec. 82. RCW 9A.76.023 and 1998 c 252 s 1 are each amended to read as follows:

(1) A person is guilty of disarming a law enforcement officer if with intent to interfere with the performance of the officer's duties the person knowingly removes a firearm or weapon from the person of a law enforcement officer or corrections officer or deprives a law enforcement officer or corrections officer of the use of a firearm or weapon, when the officer is acting within the scope of the officer's duties, does not consent to the removal, and the person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer.

(2)(a) Except as provided in (b) of this subsection, disarming a law enforcement or corrections officer is a class C felony ~~((unless))~~.

(b) Disarming a law enforcement or corrections officer is a class B felony if the firearm involved is discharged when the person removes the firearm ~~((, in which case the offense is a class B felony))~~.

Sec. 83. RCW 9A.76.070 and 1982 1st ex.s. c 47 s 21 are each amended to read as follows:

(1) A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the first degree is ~~((:))~~ a class C felony.

~~((a))~~ (b) Rendering criminal assistance in the first degree is a gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060 ~~((;~~

(b) A class C felony in all other cases ~~((;))~~.

Sec. 84. RCW 9A.76.080 and 1982 1st ex.s. c 47 s 22 are each amended to read as follows:

(1) A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the second degree is((:)) a gross misdemeanor.

~~((a))~~ (b) Rendering criminal assistance in the second degree is a misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060((;

~~(b) A gross misdemeanor in all other cases)).~~

Sec. 85. RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are each reenacted and amended to read as follows:

Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, ~~((and))~~ 9A.56.080, and section 75 of this act;

- (f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;
 - (g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
 - (h) Child selling or child buying, as defined in RCW 9A.64.030;
 - (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
 - (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
 - (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
 - (l) Extortionate extension of credit, as defined in RCW 9A.82.020;
 - (m) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
 - (n) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
 - (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
 - (p) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
 - (q) Trafficking in stolen property, as defined in RCW 9A.82.050;
 - (r) Leading organized crime, as defined in RCW 9A.82.060;
 - (s) Money laundering, as defined in RCW 9A.83.020;
 - (t) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;
 - (u) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
 - (v) Promoting pornography, as defined in RCW 9.68.140;
 - (w) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
 - (x) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
 - (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
 - (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
 - (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
 - (bb) A pattern of equity skimming, as defined in RCW 61.34.020;
 - (cc) Commercial telephone solicitation in violation of RCW 19.158.040(1);
 - (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;
 - (ee) Unlawful practice of law, as defined in RCW 2.48.180;
 - (ff) Commercial bribery, as defined in RCW 9A.68.060;
 - (gg) Health care false claims, as defined in RCW 48.80.030;
 - (hh) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);
 - (ii) Improperly obtaining financial information, as defined in RCW 9.35.010; or
 - (jj) Identity theft, as defined in RCW 9.35.020.
- (5) "Dealer in property" means a person who buys and sells property as a business.
- (6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner

undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

Sec. 86. RCW 9A.82.050 and 2001 c 222 s 8 are each amended to read as follows:

~~(1) ((A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.~~

~~(2))~~ A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

~~((3) Trafficking in stolen property in the second degree is a class C felony.))~~

(2) Trafficking in stolen property in the first degree is a class B felony.

NEW SECTION. Sec. 87. A new section is added to chapter 9A.82 RCW to read as follows:

(1) A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.

(2) Trafficking in stolen property in the second degree is a class C felony.

Sec. 88. RCW 9A.82.060 and 2001 c 222 s 9 are each amended to read as follows:

(1) A person commits the offense of leading organized crime by:

(a) Intentionally organizing, managing, directing, supervising, or financing any three or more persons with the intent to engage in a pattern of criminal profiteering activity; or

(b) Intentionally inciting or inducing others to engage in violence or intimidation with the intent to further or promote the accomplishment of a pattern of criminal profiteering activity.

(2)(a) Leading organized crime as defined in subsection (1)(a) of this section is a class A felony(~~(-and)~~).

(b) Leading organized crime as defined in subsection (1)(b) of this section is a class B felony.

Sec. 89. RCW 9A.82.080 and 2001 c 222 s 11 are each amended to read as follows:

(1)(a) It is unlawful for a person who has knowingly received any of the proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) A violation of this subsection is a class B felony.

(2)(a) It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.

(b) A violation of this subsection is a class B felony.

(3)(a) It is unlawful for a person knowingly to conspire or attempt to violate subsection (1) or (2) of this section.

~~((4) A violation of subsection (1) or (2) of this section is a class B felony.))~~

(b) A violation of this subsection (~~((3) of this section))~~ is a class C felony.

Sec. 90. RCW 9A.82.160 and 2001 c 222 s 20 are each amended to read as follows:

(1) A trustee who knowingly fails to comply with RCW 9A.82.130(1) is guilty of a gross misdemeanor.

(2) A trustee who conveys title to real property after service of the notice as provided in RCW 9A.82.130(1) with the intent to evade the provisions of RCW 9A.82.100 or 9A.82.120 with respect to such property is guilty of a class C felony.

Sec. 91. RCW 9A.84.010 and 1975 1st ex.s. c 260 s 9A.84.010 are each amended to read as follows:

(1) A person is guilty of the crime of riot if, acting with three or more other persons, he or she knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

(2)(a) Except as provided in (b) of this subsection, the crime of riot is a gross misdemeanor.

(b) The crime of riot is~~((: (a)))~~ a class C felony~~((: (b) A gross misdemeanor in all other cases))~~.

Sec. 92. RCW 9A.88.010 and 2001 c 88 s 2 are each amended to read as follows:

(1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

(2)(a) Except as provided in (b) and (c) of this subsection, indecent exposure is a misdemeanor ~~((unless such))~~.

(b) Indecent exposure is a gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of fourteen years ~~((in which case indecent exposure is a gross misdemeanor on the first offense and, if such))~~.

(c) Indecent exposure is a class C felony if the person has previously been convicted under this ~~((subsection))~~ section or of a sex offense as defined in RCW 9.94A.030~~((, then such person is guilty of a class C felony punishable under chapter 9A.20 RCW))~~.

Sec. 93. RCW 10.66.090 and 1989 c 271 s 223 are each amended to read as follows:

(1) ~~((Any))~~ A person who willfully disobeys an off-limits order issued under this chapter ~~((shall be))~~ is guilty of a gross misdemeanor.

(2) ~~((Any person who))~~ A person is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person willfully disobeys an off-limits order in violation of the terms of the order and ~~((who))~~ also either:

(a) Enters or remains in a PADT area that is within one thousand feet of any school; or

(b) Is convicted of a second or subsequent violation of this chapter~~((, is guilty of a class C felony))~~.

Sec. 94. RCW 10.79.015 and 1980 c 52 s 1 are each amended to read as follows:

Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

(1) To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

(2) To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

(3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony: PROVIDED, That if the evidence is sought to be secured from any radio or television station or from any regularly published newspaper, magazine or wire service, or from any employee of such station, wire service or publication, the evidence shall be secured only through a

subpoena duces tecum unless: (a) There is probable cause to believe that the person or persons in possession of the evidence may be involved in the crime under investigation; or (b) there is probable cause to believe that the evidence sought to be seized will be destroyed or hidden if subpoena duces tecum procedures are followed. As used in this subsection, "person or persons" includes both natural and judicial persons.

(4) To search for and seize any instrument, apparatus or device used to obtain telephone or telegraph service in violation of RCW ((9.45.240)) 9.26A.110 or section 21 of this act.

Sec. 95. RCW 10.79.040 and 1921 c 71 s 1 are each amended to read as follows:

(1) It shall be unlawful for any policeman or other peace officer to enter and search any private dwelling house or place of residence without the authority of a search warrant issued upon a complaint as by law provided.

(2) Any policeman or other peace officer violating the provisions of this section is guilty of a gross misdemeanor.

Sec. 96. RCW 10.95.020 and 1998 c 305 s 1 are each amended to read as follows:

A person is guilty of aggravated first degree murder, a class A felony, if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

(10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree or residential burglary;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

(12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;

(13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;

(14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is defined in RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

(a) Harassment as defined in RCW 9A.46.020; or

(b) Any criminal assault.

Sec. 97. RCW 13.40.0357 and 2002 c 324 s 3 and 2002 c 175 s 20 are each reenacted and 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(2) (a) and (c))	E
<u>E</u>	<u>Malicious Mischief 3 (9A.48.090(2)(b))</u>	<u>E</u>
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
<u>E</u>	<u>Tampering with Fire Alarm Apparatus with Intent to Commit Arson (section 24 of this act)</u>	<u>E</u>
A	Possession of Incendiary Device (9.40.120)	B+
Assault and Other Crimes Involving Physical Harm		
A	Assault I (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+
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(2)(a))	D+
E	Possession of Legend Drug (69.41.030(2)(b))	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(((a)(i)-(i) or (ii))) (2) (a) or (b))	B+

C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(((a)(1)(iii)))) (2)(c))	C
E	Possession of Marihuana <40 grams (((69.50.401(e))) <u>section 335 of this act</u>)	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))) <u>section 332(2)(a) or (b) of this act</u>)	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (((69.50.401(b)(1)(iii), (iv), (v))) <u>section 332(2)(c), (d), or (e) of this act</u>)	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (((69.50.401(d))) <u>section 334 of this act</u>)	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (((69.50.401(e))) <u>section 333 of this act</u>)	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)))) (2)(a)(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
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(2)(b))	D+
D+	Riot Without Weapon (9A.84.010(2)(a))	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 <u>1 and 2</u> (9A.56.080 <u>and section 75 of this act</u>)	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+
C	Identity Theft 1 (9.35.020(2)((a)))	D
D	Identity Theft 2 (9.35.020((2)(b))) (3)	E
D	Improperly Obtaining Financial Information (9.35.010)	E
B	Possession of Stolen Property I (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 Permission 1 and 2 (9A.56.070 ((1) and (2))) <u>and section 73 of this act</u>	D
Motor Vehicle Related Crimes		
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (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 ¹ (9A.76.110)	C
C	Escape 2 ¹ (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) ²	V

¹Escape 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

²If 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	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS		
Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
	B	LOCAL SANCTIONS (LS)	15-36 WEEKS		52-65 WEEKS	
	C+	LS		15-36 WEEKS		
	C	LS			15-36 WEEKS	
	D+	LS	Local Sanctions: 0 to 30 Days 0 to 12 Months Community Supervision 0 to 150 Hours Community Restitution \$0 to \$500 Fine			
D	LS					
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(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).

Sec. 98. RCW 13.40.070 and 2001 c 175 s 2 are each amended to read as follows:

(1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (7) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor

may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(~~(1)(b)~~) ~~(2)(a)(iii)~~; or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department;
or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has two or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (7) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(9) The responsibilities of the prosecutor under subsections (1) through (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(10) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such

mediation or victim offender reconciliation programs shall be voluntary for victims.

Sec. 99. RCW 13.40.160 and 2002 c 175 s 22 are each amended to read as follows:

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsections (2), (3), and (4) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsections (2), (3), and (4) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option C of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, 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 respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a)(i) Frequency and type of contact between the 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, legal guardians, or others;
- (iv) Anticipated length of treatment; and
- (v) 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.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option C, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(b)(i) Devote time to a specific education, employment, or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;

(viii) Comply with the conditions of any court-ordered probation bond; or

(ix) The court shall order that the offender may not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools

and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (3), 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. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection 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 (3) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "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. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection (3) is not appealable under RCW 13.40.230.

(4) 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 the disposition alternative under RCW 13.40.165.

(5) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(~~(1)(b))~~ (2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(6) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(7) Except as provided under subsection (3) or (4) of this section or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(8) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

Sec. 100. RCW 13.40.193 and 1997 c 338 s 30 are each amended to read as follows:

(1) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040(~~((1)(b))~~) (2)(a)(iii), the court shall impose a minimum disposition of ten days of confinement. If the offender's standard range of disposition for the offense as indicated in RCW 13.40.0357 is more than thirty days of confinement, the court shall commit the offender to the department for the standard range disposition. The offender shall not be released until the offender has served a minimum of ten days in confinement.

(2) If the court finds that the respondent or an accomplice was armed with a firearm, the court shall determine the standard range disposition for the offense pursuant to RCW 13.40.160. If the offender or an accomplice was armed with a firearm when the offender committed any felony other than possession of a machine gun, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, or use of a machine gun in a felony, the following periods of total confinement must be added to the sentence: For a class A felony, six months; for a class B felony, four months; and for a class C felony, two months. The additional time shall be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357.

(3) When a disposition under this section would effectuate a manifest injustice, the court may impose another disposition. When a judge finds a manifest injustice and imposes a disposition of confinement exceeding thirty days, the court shall commit the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. When a judge finds a manifest injustice and imposes a disposition of confinement less than thirty days, the disposition shall be comprised of confinement or community supervision or both.

(4) Any term of confinement ordered pursuant to this section shall run consecutively to any term of confinement imposed in the same disposition for other offenses.

Sec. 101. RCW 13.40.265 and 1997 c 338 s 37 are each amended to read as follows:

(1)(a) If a juvenile thirteen years of age or older is found by juvenile court to have committed an offense while armed with a firearm or an offense that is a violation of RCW 9.41.040(~~((1)(b))~~) (2)(a)(iii) or chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(b) Except as otherwise provided in (c) of this subsection, upon petition of a juvenile who has been found by the court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court may at any

time the court deems appropriate notify the department of licensing that the juvenile's driving privileges should be reinstated.

(c) If the offense is the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered, whichever is later. If the offense is the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the date the juvenile turns seventeen or one year after the date judgment was entered, whichever is later.

(2)(a) If a juvenile enters into a diversion agreement with a diversion unit pursuant to RCW 13.40.080 concerning an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion unit shall notify the department of licensing within twenty-four hours after the diversion agreement is signed.

(b) If a diversion unit has notified the department pursuant to (a) of this subsection, the diversion unit shall notify the department of licensing when the juvenile has completed the agreement.

Sec. 102. RCW 14.20.020 and 1993 c 208 s 2 are each amended to read as follows:

(1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter.

(2)(a) Except as provided in (b) of this subsection, a person acting as an aircraft dealer without a currently issued aircraft dealer's license is guilty of a misdemeanor and shall be punished by either a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or both.

(b) A person convicted on a second or subsequent conviction within a five-year period is guilty of a gross misdemeanor and shall be punished by either a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

(3) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence that may be imposed under this section, the court in its discretion may prohibit the violator from acting as an aircraft dealer within the state for such a period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as contempt of court.

~~((2))~~ (4) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary.

Sec. 103. RCW 15.21.060 and 1965 c 61 s 6 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter is guilty of a misdemeanor ~~((and guilty of a gross misdemeanor for any))~~.

(2) A second ~~((and))~~ or subsequent ~~((offense: PROVIDED, That))~~ violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

Sec. 104. RCW 15.24.200 and 1961 c 11 s 15.24.200 are each amended to read as follows:

(1) Any person who violates or aids in the violation of any provision of this chapter ~~((shall be))~~ is guilty of a gross misdemeanor ~~((and))~~.

(2) Any person who violates or aids in the violation of any rule or regulation of the commission ~~((shall be))~~ is guilty of a misdemeanor.

Sec. 105. RCW 15.26.300 and 1969 c 129 s 30 are each amended to read as follows:

(1) ~~Except as provided in subsection (2) of this section, any person violating any provision of this chapter or any rule or regulation adopted hereunder ((shall be)) is guilty of a misdemeanor ((and guilty of a gross misdemeanor for any)).~~

(2) A second ((and)) or subsequent violation ~~((:—PROVIDED, That))~~ is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

Sec. 106. RCW 15.30.250 and 1961 c 29 s 25 are each amended to read as follows:

(1) ~~Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor ((and guilty of a gross misdemeanor for any subsequent offense, however;)).~~

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

Sec. 107. RCW 15.60.055 and 1993 c 89 s 17 are each amended to read as follows:

(1) ~~Except as provided in subsection (2) of this section, a person who violates or fails to comply with any of the provisions of this chapter or any rule adopted under this chapter ((shall be)) is guilty of a misdemeanor((and for)).~~

(2) A second ((and each)) or subsequent violation is a gross misdemeanor.

~~((2))~~ (3) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter or any rule adopted under this chapter and that violation has not been punished as a misdemeanor or gross misdemeanor, the director may impose and collect a civil penalty not exceeding one thousand dollars for each violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of omission or commission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty.

Sec. 108. RCW 15.61.050 and 1963 c 232 s 14 are each amended to read as follows:

(1) ~~Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor ((and guilty of a gross misdemeanor for any subsequent offense, however;)).~~

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

Sec. 109. RCW 15.80.650 and 1969 ex.s. c 100 s 36 are each amended to read as follows:

(1) Except as provided in RCW 15.80.640 or subsection (2) of this section, any person violating any provision of this chapter (~~(; except as provided in RCW 15.80.640,)~~) or rules adopted hereunder (~~(;)~~) is guilty of a misdemeanor (~~(and upon)~~).

(2) A second or subsequent (~~(offense, shall be guilty of)~~) violation is a gross misdemeanor (~~(; PROVIDED, That)~~). Any offense committed more than five years after a previous conviction shall be considered a first offense.

Sec. 110. RCW 16.52.015 and 1994 c 261 s 3 are each amended to read as follows:

(1) Law enforcement agencies and animal care and control agencies may enforce the provisions of this chapter. Animal care and control agencies may enforce the provisions of this chapter in a county or city only if the county or city legislative authority has entered into a contract with the agency to enforce the provisions of this chapter.

(2) Animal control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Washington.

(3) Animal control officers have the following enforcement powers when enforcing this chapter:

(a) The power to issue citations based on probable cause to offenders for misdemeanor and gross misdemeanor violations of this chapter or RCW 9.08.070, sections 10 through 13 of this act, or 81.56.120;

(b) The power to cause a law enforcement officer to arrest and take into custody any person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or RCW 9.08.070 or 81.56.120. Animal control officers may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(c) The power to carry nonfirearm protective devices for personal protection;

(d) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or RCW 9.08.070 or 81.56.120, and to seize evidence of those violations.

(4) Upon request of an animal control officer who has probable cause to believe that a person has violated this chapter or RCW 9.08.070 or 81.56.120, a law enforcement agency officer may arrest the alleged offender.

Sec. 111. RCW 16.52.190 and 1994 c 261 s 13 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, a person is guilty of the crime of poisoning animals if the person intentionally or knowingly poisons an animal under circumstances which do not constitute animal cruelty in the first degree.

(2) Subsection (1) of this section shall not apply to euthanizing by poison an animal in a lawful and humane manner by the animal's owner, or by a duly

authorized servant or agent of the owner, or by a person acting pursuant to instructions from a duly constituted public authority.

(3) Subsection (1) of this section shall not apply to the reasonable use of rodent or pest poison, insecticides, fungicides, or slug bait for their intended purposes. As used in this section, the term "rodent" includes but is not limited to Columbia ground squirrels, other ground squirrels, rats, mice, gophers, rabbits, and any other rodent designated as injurious to the agricultural interests of the state as provided in chapter 17.16 RCW. The term "pest" as used in this section includes any pest as defined in RCW 17.21.020.

(4) A person violating this section is guilty of a gross misdemeanor.

Sec. 112. RCW 16.52.193 and 1987 c 34 s 7 are each amended to read as follows:

(1) It (~~shall be~~) is unlawful for any person other than a registered pharmacist to sell at retail or furnish to any person any strychnine: PROVIDED, That nothing herein (~~shall~~) prohibits county, state, or federal agents, in the course of their duties, from furnishing strychnine to any person. Every such registered pharmacist selling or furnishing such strychnine shall, before delivering the same, record the transaction as provided in RCW 69.38.030. If any such registered pharmacist (~~shall~~) suspects that any person desiring to purchase strychnine intends to use the same for the purpose of poisoning unlawfully any domestic animal or domestic bird, he or she may refuse to sell to such person, but whether or not he or she makes such sale, he or she shall if he or she so suspects an intention to use the strychnine unlawfully, immediately notify the nearest peace officer, giving such officer a complete description of the person purchasing, or attempting to purchase, such strychnine.

(2) A person violating this section is guilty of a gross misdemeanor.

Sec. 113. RCW 16.52.200 and 1994 c 261 s 14 are each amended to read as follows:

(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years. The court may delay its decision on forfeiture under this subsection until the end of the probationary period.

(4) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs

include expenses of the investigation, and the animal's care, euthanization, or adoption.

(5) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

(6) As a condition of the sentence imposed under this chapter or RCW 9.08.070 or sections 10 through 13 of this act, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment.

Sec. 114. RCW 16.52.230 and 1989 c 359 s 5 are each amended to read as follows:

No provision of RCW 9.08.070, sections 10 through 13 of this act, or 16.52.220 shall in any way interfere with or impair the operation of any other provision of this chapter or Title 28B RCW, relating to higher education or biomedical research. The provisions of RCW 9.08.070, sections 10 through 13 of this act, and 16.52.220 are cumulative and nonexclusive and shall not affect any other remedy.

Sec. 115. RCW 16.58.170 and 1971 ex.s. c 181 s 17 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any person who violates the provisions of this chapter or any rule or regulation adopted hereunder ((shall be)) is guilty of a misdemeanor ((and shall be guilty of a gross misdemeanor for any)).

(2) A second or subsequent violation((~~PROVIDED, That~~)) is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

Sec. 116. RCW 16.65.440 and 1959 c 107 s 44 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any person who ((shall)) violates any provisions or requirements of this chapter or rules and regulations adopted by the director pursuant to this chapter ((shall be deemed)) is guilty of a misdemeanor((~~and any~~)).

(2) A second or subsequent violation ((thereafter shall be deemed)) is a gross misdemeanor.

Sec. 117. RCW 17.10.350 and 1997 c 353 s 31 are each amended to read as follows:

(1) Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty not to exceed one thousand dollars. The state noxious weed control board shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and submit the schedule to the appropriate court. If a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid.

(2) Failure to pay any monetary penalties imposed under this chapter is punishable as a misdemeanor.

Sec. 118. RCW 17.21.310 and 1967 c 177 s 16 are each amended to read as follows:

(1) ~~Except as provided in subsection (2) of this section, any person who ((shall)) violates any provisions or requirements of this chapter or rules adopted hereunder ((shall be deemed)) is guilty of a misdemeanor ((and guilty of a gross misdemeanor for any)).~~

(2) ~~A second ((and)) or subsequent offense((~~PROVIDED, That~~)) is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.~~

Sec. 119. RCW 17.24.100 and 1981 c 296 s 26 are each amended to read as follows:

(1) ~~Except as provided in subsection (2) of this section, every person who ((shall)) violates or fails to comply with any rule or regulation adopted and promulgated by the director of agriculture in accordance with and under the provision of this chapter ((17.24 RCW, as now or hereafter amended, shall be)) is guilty of a misdemeanor((~~and for~~)).~~

(2) ~~A second and each subsequent violation or failure to comply with the provisions of this chapter or rule or regulation adopted hereunder((~~shall be guilty of~~)) is a gross misdemeanor.~~

Sec. 120. RCW 18.04.370 and 2001 c 294 s 19 are each amended to read as follows:

(1) Any person who violates any provision of this chapter((;)) shall be guilty of a crime, as follows:

(a) Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than ten thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment.

(b) Notwithstanding (a) of this subsection, any person who uses a professional title intended to deceive the public, in violation of RCW 18.04.345, having previously entered into a stipulated agreement and order of assurance with the board, is guilty of a class C felony, and upon conviction thereof, is subject to a fine of not more than ten thousand dollars, or to imprisonment for not more than two years, or to both such fine and imprisonment.

(2) With the exception of first time violations of RCW 18.04.345, subject to subsection (3) of this section whenever the board has reason to believe that any person is violating the provisions of this chapter it shall certify the facts to the prosecuting attorney of the county in which such person resides or may be apprehended and the prosecuting attorney shall cause appropriate proceedings to be brought against such person.

(3) The board may elect to enter into a stipulated agreement and orders of assurance with persons in violation of RCW 18.04.345 who have not previously been found to have violated the provisions of this chapter. The board may order full restitution to injured parties as a condition of a stipulated agreement and order of assurance.

(4) Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive or other relief as above provided.

Sec. 121. RCW 18.06.130 and 1995 c 323 s 11 are each amended to read as follows:

(1) The secretary shall develop a form to be used by an acupuncturist to inform the patient of the acupuncturist's scope of practice and qualifications. All license holders shall bring the form to the attention of the patients in whatever manner the secretary, by rule, provides.

(2) A person violating this section is guilty of a misdemeanor.

Sec. 122. RCW 18.06.140 and 1995 c 323 s 12 are each amended to read as follows:

(1) Every licensed acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to other health care practitioners operating within the scope of their authorized practices. The written plan shall be submitted with the initial application for licensure as well as annually thereafter with the license renewal fee to the department. The department may withhold licensure or renewal of licensure if the plan fails to meet the standards contained in rules adopted by the secretary.

(2) When the acupuncturist sees patients with potentially serious disorders such as cardiac conditions, acute abdominal symptoms, and such other conditions, the acupuncturist shall immediately request a consultation or recent written diagnosis from a physician licensed under chapter 18.71 or 18.57 RCW. In the event that the patient with the disorder refuses to authorize such consultation or provide a recent diagnosis from such physician, acupuncture treatment shall not be continued.

(3) A person violating this section is guilty of a misdemeanor.

Sec. 123. RCW 18.08.460 and 1985 c 37 s 17 are each amended to read as follows:

(1) Any person who violates any provision of this chapter or any rule promulgated under it is guilty of a misdemeanor and may also be subject to a civil penalty in an amount not to exceed one thousand dollars for each offense.

~~((+))~~ (2) It shall be the duty of all officers in the state or any political subdivision thereof to enforce this chapter. Any public officer may initiate an action before the board to enforce the provisions of this chapter.

~~((2))~~ (3) The board may apply for relief by injunction without bond to restrain a person from committing any act that is prohibited by this chapter. In such proceedings, it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable for their actions in any such proceeding or in any other proceeding instituted by the board under this chapter. The board in any proper case shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid the prosecution of the violator.

~~((3))~~ (4) No person practicing architecture is entitled to maintain a proceeding in any court of this state relating to services in the practice of architecture unless it is alleged and proved that the person was registered or authorized under this chapter to practice or offer to practice architecture at the time the architecture services were offered or provided.

Sec. 124. RCW 18.32.675 and 1935 c 112 s 19 are each amended to read as follows:

(1) No corporation shall practice dentistry or shall solicit through itself, or its agent, officers, employees, directors or trustees, dental patronage for any dentists or dental surgeon employed by any corporation: PROVIDED, That nothing contained in this chapter shall prohibit a corporation from employing a dentist or dentists to render dental services to its employees: PROVIDED, FURTHER, That such dental services shall be rendered at no cost or charge to the employees; nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when such dentist assumes full responsibility for such information and services.

(2) Any corporation violating ~~((the provisions of))~~ this section is guilty of a gross misdemeanor, and each day that this chapter is violated shall be considered a separate offense.

Sec. 125. RCW 18.32.745 and 1994 sp.s. c 9 s 224 are each amended to read as follows:

(1) No manager, proprietor, partnership, or association owning, operating, or controlling any room, office, or dental parlors, where dental work is done, provided, or contracted for, shall employ or retain any unlicensed person or dentist as an operator; nor shall fail, within ten days after demand made by the secretary of health or the commission in writing sent by certified mail, addressed to any such manager, proprietor, partnership, or association at the room, office, or dental parlor, to furnish the secretary of health or the commission with the names and addresses of all persons practicing or assisting in the practice of dentistry in his or her place of business or under his or her control, together with a sworn statement showing by what license or authority the persons are practicing dentistry.

(2) The sworn statement shall not be used as evidence in any subsequent court proceedings, except in a prosecution for perjury connected with its execution.

(3) Any violation of ~~((the provisions of))~~ this section is improper, unprofessional, and dishonorable conduct~~((; it also is)), and~~ grounds for injunction proceedings as provided by this chapter~~((, and in addition is)).~~

(4)(a) Except as provided in (b) of this subsection, a violation of this section is also a gross misdemeanor~~((, except that)).~~

(b) The failure to furnish the information as may be requested in accordance with this section is a misdemeanor.

Sec. 126. RCW 18.32.755 and 1994 sp.s. c 9 s 225 are each amended to read as follows:

(1) Any advertisement or announcement for dental services must include for each office location advertised the names of all persons practicing dentistry at that office location.

(2) Any violation of ~~((the provisions of))~~ this section is improper, unprofessional, and dishonorable conduct~~((; it also is)), and~~ grounds for injunction proceedings as provided by RCW 18.130.190(4)~~((, and in addition is)).~~

(3) A violation of this section is also a gross misdemeanor.

Sec. 127. RCW 18.39.215 and 1987 c 331 s 76 are each amended to read as follows:

(1)(a) No licensed embalmer shall embalm a deceased body without first having obtained authorization from a family member or representative of the deceased.

(b) Notwithstanding the above prohibition a licensee may embalm without such authority when after due diligence no authorized person can be contacted and embalming is in accordance with legal or accepted standards of care in the community, or the licensee has good reason to believe that the family wishes embalming. If embalming is performed under these circumstances, the licensee shall not be deemed to be in violation of the provisions of this subsection.

(c) The funeral director or embalmer shall inform the family member or representative of the deceased that embalming is not required by state law, except that embalming is required under certain conditions as determined by rule by the state board of health.

(2)(a) Any person authorized to dispose of human remains shall refrigerate or embalm the body within twenty-four hours upon receipt of the body, unless disposition of the body has been made. However, subsection (1) of this section and RCW 68.50.108 shall be complied with before a body is embalmed. Upon written authorization of the proper state or local authority, the provisions of this subsection may be waived for a specified period of time.

(b) Violation of this subsection is a gross misdemeanor.

Sec. 128. RCW 18.39.217 and 1985 c 402 s 7 are each amended to read as follows:

(1) A permit or endorsement issued by the board or under chapter 68.05 RCW is required in order to operate a crematory or conduct a cremation.

(2) Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a separate violation.

(3) Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board of funeral directors and embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board.

Sec. 129. RCW 18.39.220 and 1981 c 43 s 16 are each amended to read as follows:

(1) Every funeral director or embalmer who pays, or causes to be paid, directly or indirectly, money, or other valuable consideration, for the securing of business, and every person who accepts money, or other valuable consideration, directly or indirectly, from a funeral director or from an embalmer, in order that the latter may obtain business is guilty of a gross misdemeanor.

(2) Every person who sells, or offers for sale, any share, certificate, or interest in the business of any funeral director or embalmer, or in any corporation, firm, or association owning or operating a funeral establishment, which promises or purports to give to the purchaser a right to the services of the funeral director, embalmer, or corporation, firm, or association at a charge or cost less than that offered or given to the public, is guilty of a gross misdemeanor.

Sec. 130. RCW 18.39.231 and 1986 c 259 s 66 are each amended to read as follows:

(1) A funeral director or any person under the supervision of a funeral director shall not, in conjunction with any professional services performed for compensation under this chapter, provide financial or investment advice to any person other than a family member, represent any person in a real estate transaction, or act as an agent under a power of attorney for any person. However, this section shall not be deemed to prohibit a funeral establishment from entering into prearrangement funeral service contracts in accordance with this chapter or to prohibit a funeral director from providing advice about government or insurance benefits.

(2) A violation of this section is a gross misdemeanor and is grounds for disciplinary action.

(3) The board shall adopt such rules as the board deems reasonably necessary to prevent unethical financial dealings between funeral directors and their clients.

Sec. 131. RCW 18.57.160 and 1981 c 277 s 9 are each amended to read as follows:

Every person falsely claiming himself or herself to be the person named in a certificate issued to another, or falsely claiming himself or herself to be the person entitled to the same, ~~((shall be))~~ is guilty of ~~((a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of))~~ forgery under RCW 9A.60.020.

Sec. 132. RCW 18.64.045 and 1996 c 191 s 44 are each amended to read as follows:

(1) The owner of each and every place of business which manufactures drugs shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, for which the owner shall receive a license of location from the department, which shall entitle the owner to manufacture drugs at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business.

(2) Failure to conform with this section ~~((shall be deemed))~~ is a misdemeanor, and each day that ~~((said))~~ the failure continues ~~((shall be deemed))~~ is a separate offense.

(3) In event ~~((such))~~ the license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

Sec. 133. RCW 18.64.046 and 1996 c 191 s 45 are each amended to read as follows:

(1) The owner of each place of business which sells legend drugs and nonprescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business.

(2) Failure to conform with this section (~~shall be deemed~~) is a misdemeanor, and each day that (~~said~~) the failure continues (~~shall be deemed~~) is a separate offense.

(3) In event (~~such~~) the license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

Sec. 134. RCW 18.64.047 and 1996 c 191 s 46 are each amended to read as follows:

(1) Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The department may issue a registration to such vendor on an approved application made to the department.

(2) Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, (~~shall be~~) is guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense.

(3) In event (~~such~~) the registration fee remains unpaid on the date due, no renewal or new registration shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. This registration shall not authorize the sale of legend drugs or controlled substances.

Sec. 135. RCW 18.64.245 and 1989 1st ex.s. c 9 s 402 and 1989 c 352 s 2 are each reenacted and amended to read as follows:

(1) Every proprietor or manager of a pharmacy shall keep readily available a suitable record of prescriptions which shall preserve for a period of not less than two years the record of every prescription dispensed at such pharmacy which shall be numbered, dated, and filed, and shall produce the same in court or before any grand jury whenever lawfully required to do so. The record shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy. All record-keeping requirements for controlled

substances must be complied with. Such record of prescriptions shall be for confidential use in the pharmacy, only. The record of prescriptions shall be open for inspection by the board of pharmacy or any officer of the law, who is authorized to enforce chapter 18.64, 69.41, or 69.50 RCW.

(2) A person violating this section is guilty of a misdemeanor.

Sec. 136. RCW 18.64.246 and 2002 c 96 s 1 are each amended to read as follows:

(1) To every box, bottle, jar, tube or other container of a prescription which is dispensed there shall be fixed a label bearing the name and address of the dispensing pharmacy, the prescription number, the name of the prescriber, the prescriber's directions, the name and strength of the medication, the name of the patient, the date, and the expiration date. The security of the cover or cap on every bottle or jar shall meet safety standards adopted by the state board of pharmacy. At the prescriber's request, the name and strength of the medication need not be shown. If the prescription is for a combination medication product, the generic names of the medications combined or the trade name used by the manufacturer or distributor for the product shall be noted on the label. The identification of the licensed pharmacist responsible for each dispensing of medication must either be recorded in the pharmacy's record system or on the prescription label. This section shall not apply to the dispensing of medications to in-patients in hospitals.

(2) A person violating this section is guilty of a misdemeanor.

Sec. 137. RCW 18.64.270 and 1963 c 38 s 13 are each amended to read as follows:

(1) Every proprietor of a wholesale or retail drug store shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him or her except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines.

(2) Any person who shall knowingly, willfully or fraudulently falsify or adulterate any drug or medicinal substance or preparation authorized or recognized by an official compendium or used or intended to be used in medical practice, or shall willfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medicinal purposes, ~~((shall be deemed))~~ is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of ~~((any of the provisions of))~~ this section may suffer both fine and imprisonment. In any case he or she shall forfeit to the state of Washington all drugs or preparations so falsified or adulterated.

Sec. 138. RCW 18.71.190 and 1909 c 192 s 16 are each amended to read as follows:

Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself or herself to be the person named in such certificate, or falsely claiming himself or herself to be the person entitled to the same, ~~((shall be))~~ is guilty of ~~((a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of))~~ forgery under RCW 9A.60.020.

Sec. 139. RCW 18.92.230 and 1941 c 71 s 23 are each amended to read as follows:

Any person filing or attempting to file, as his or her own, the diploma or license of another (~~shall be deemed~~) is guilty of (~~a felony, and upon conviction thereof, shall be subject to such fine and imprisonment as is made and provided by the statutes of this state for the crime of~~) forgery under RCW 9A.60.020.

Sec. 140. RCW 18.130.075 and 1991 c 332 s 2 are each amended to read as follows:

(1) If an individual licensed in another state(;) that has licensing standards substantially equivalent to Washington(;) applies for a license, the disciplining authority shall issue a temporary practice permit authorizing the applicant to practice the profession pending completion of documentation that the applicant meets the requirements for a license and is also not subject to denial of a license or issuance of a conditional license under this chapter. The temporary permit may reflect statutory limitations on the scope of practice. The permit shall be issued only upon the disciplining authority receiving verification from the states in which the applicant is licensed that the applicant is currently licensed and is not subject to charges or disciplinary action for unprofessional conduct or impairment. Notwithstanding RCW 34.05.422(3), the disciplining authority shall establish, by rule, the duration of the temporary practice permits.

(2) Failure to surrender the temporary practice permit is a misdemeanor under RCW 9A.20.010 and shall be unprofessional conduct under this chapter.

(3) The issuance of temporary permits is subject to the provisions of this chapter, including summary suspensions.

Sec. 141. RCW 18.130.190 and 2001 c 207 s 2 are each amended to read as follows:

(1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by

one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7)(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(8) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

Sec. 142. RCW 19.09.275 and 1993 c 471 s 15 are each amended to read as follows:

(1) Any person who knowingly violates any provision of this chapter or who knowingly gives false or incorrect information to the secretary, 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 gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Any person who violates any provisions of this chapter or who gives false or incorrect information to the secretary, 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.

Sec. 143. RCW 19.25.020 and 1991 c 38 s 2 are each amended to read as follows:

(1) A person commits an offense if the person:

(a) Knowingly reproduces for sale or causes to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(b) Transports within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds have been reproduced or transferred without the consent of the owner; or

(c) Advertises, offers for sale, sells, or rents, or causes the sale, resale, or rental of or possesses for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by ~~((~~ a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both if:

(i) The offense involves at least one thousand unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section~~((;))~~.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings during a one hundred eighty-day period.

~~((3))~~ (c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

~~((4))~~ (3) This section does not affect the rights and remedies of a party in private litigation.

~~((5))~~ (4) This section applies only to recordings that were initially fixed before February 15, 1972.

Sec. 144. RCW 19.25.030 and 1991 c 38 s 3 are each amended to read as follows:

(1) A person commits an offense if the person:

(a) For commercial advantage or private financial gain advertises, offers for sale, sells, rents, transports, causes the sale, resale, rental, or transportation of or possesses for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(b) With the intent to sell for commercial advantage or private financial gain records or fixes or causes to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by ~~((~~ a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one thousand unauthorized recordings embodying sound or at least one hundred unauthorized audiovisual recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section((;)).

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings embodying sound or more than ten but less than one hundred unauthorized audiovisual recordings during a one hundred eighty-day period.

((3)) (c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

((4)) (3) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

((5)) (4) For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

((6)) (5) This section does not affect the rights and remedies of a party in private litigation.

Sec. 145. RCW 19.25.040 and 1991 c 38 s 4 are each amended to read as follows:

(1) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, the person knowingly advertises, or offers for sale, resale, or rent, or sells or resells, or rents, leases, or lends, or possesses for any of these purposes, any recording which does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording.

(2)(a) An offense under this section is a class B felony punishable by((;)) a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one hundred unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section((;)).

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than ten but less than one hundred unauthorized recordings during a one hundred eighty-day period.

((3)) (c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

((4)) (3) This section does not affect the rights and remedies of a party in private litigation.

Sec. 146. RCW 19.48.110 and 1985 c 129 s 2 are each amended to read as follows:

(1)(a) Any person who (~~shall~~) willfully obtains food, money, credit, use of ski area facilities, lodging or accommodation at any hotel, inn, restaurant, commercial ski area, boarding house or lodging house, without paying therefor, with intent to defraud the proprietor, owner, operator or keeper thereof; or who obtains food, money, credit, use of ski area facilities, lodging or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, by the use of any false pretense; or who, after obtaining food, money, credit, use of ski area facilities, lodging, or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house, or lodging house, removes or causes to be removed from such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, his or her baggage, without the permission or consent of the proprietor, manager or authorized employee thereof, before paying for such food, money, credit, use of ski area facilities, lodging or accommodation, (~~shall be~~) is guilty of a gross misdemeanor(~~(: PROVIDED, That)~~), except as provided in (b) of this subsection.

(b) If the aggregate amount of food, money, use of ski area facilities, lodging or accommodation, or credit so obtained is seventy-five dollars or more such person (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Proof that food, money, credit, use of ski area facilities, lodging or accommodation were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that the person refused or neglected to pay for such food, money, credit, use of ski area facilities, lodging or accommodation on demand, or that he or she gave in payment for such food, money, credit, use of ski area facilities, lodging or accommodation, negotiable paper on which payment was refused, or that he or she absconded, or departed from, or left, the premises without paying for such food, money, credit, use of ski area facilities, lodging or accommodation, or that he or she removed, or attempted to remove, or caused to be removed, or caused to be attempted to be removed his or her property or baggage, shall be prima facie evidence of the fraudulent intent hereinbefore mentioned.

Sec. 147. RCW 19.68.010 and 1993 c 492 s 233 are each amended to read as follows:

(1) It shall be unlawful for any person, firm, corporation or association, whether organized as a cooperative, or for profit or nonprofit, to pay, or offer to pay or allow, directly or indirectly, to any person licensed by the state of Washington to engage in the practice of medicine and surgery, drugless treatment in any form, dentistry, or pharmacy and it shall be unlawful for such person to request, receive or allow, directly or indirectly, a rebate, refund, commission, unearned discount or profit by means of a credit or other valuable consideration in connection with the referral of patients to any person, firm, corporation or association, or in connection with the furnishings of medical, surgical or dental care, diagnosis, treatment or service, on the sale, rental, furnishing or supplying of clinical laboratory supplies or services of any kind, drugs, medication, or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment.

(2) Ownership of a financial interest in any firm, corporation or association which furnishes any kind of clinical laboratory or other services prescribed for medical, surgical, or dental diagnosis shall not be prohibited under this section

where ~~((1))~~ (a) the referring practitioner affirmatively discloses to the patient in writing, the fact that such practitioner has a financial interest in such firm, corporation, or association; and ~~((2))~~ (b) the referring practitioner provides the patient with a list of effective alternative facilities, informs the patient that he or she has the option to use one of the alternative facilities, and assures the patient that he or she will not be treated differently by the referring practitioner if the patient chooses one of the alternative facilities.

(3) Any person violating ~~((the provisions of))~~ this section is guilty of a misdemeanor.

Sec. 148. RCW 19.76.110 and 1897 c 38 s 2 are each amended to read as follows:

It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of RCW 19.76.100. ~~((Any person or persons who shall violate any of the provisions of RCW 19.76.100 through 19.76.120 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined five dollars for each and every cask, barrel, keg, or box, and fifty cents for each and every bottle so by him, her or them filled, bought, sold, used, trafficked in or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg and box and one dollar for each and every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense.))~~

NEW SECTION. Sec. 149. A new section is added to chapter 19.76 RCW to read as follows:

Any person who violates RCW 19.76.100 through 19.76.120 is guilty of a misdemeanor, and upon conviction shall be fined five dollars for each and every cask, barrel, keg, or box, and fifty cents for each and every bottle so by him, her, or them filled, bought, sold, used, trafficked in, or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg, and box and one dollar for each and every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense.

Sec. 150. RCW 19.86.145 and 1989 c 359 s 4 are each amended to read as follows:

Any violation of RCW 9.08.070, sections 10 through 13 of this act, or 16.52.220 constitutes an unfair or deceptive practice in violation of this chapter. The relief available under this chapter for violations of RCW 9.08.070, sections 10 through 13 of this act, or 16.52.220 by a research institution shall be limited to only monetary penalties in an amount not to exceed two thousand five hundred dollars.

Sec. 151. RCW 19.100.210 and 1980 c 63 s 2 are each amended to read as follows:

(1) The attorney general or director may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Every person who shall violate the terms of any injunction issued as in this chapter provided shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

(3) Every person who violates RCW 19.100.020, 19.100.080, 19.100.150, and 19.100.170 (~~as now or hereafter amended~~) shall forfeit a civil penalty of not more than two thousand dollars for each violation.

(4) For the purpose of this section the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued and in such cases the attorney general or director acting in the name of the state may petition for the recovery of civil penalties.

(5) In the enforcement of this chapter, the attorney general or director may accept an assurance of discontinuance with the provisions of this chapter from any person deemed by the attorney general or director in violation hereof. Any such assurance shall be in writing, shall state that the person giving such assurance does not admit to any violation of this chapter or to any facts alleged by the attorney general or director, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

~~((3))~~ (6) Any person who willfully violates any provision of this chapter or who willfully violates any rule adopted or order issued under this chapter is guilty of a class B felony and shall upon conviction be fined not more than five thousand dollars or imprisoned for not more than ten years or both, but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

~~((4))~~ (7) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Sec. 152. RCW 19.105.480 and 1988 c 159 s 24 are each amended to read as follows:

(1) Any person who willfully fails to register an offering of camping resort contracts under this chapter is guilty of a gross misdemeanor.

(2) It is a gross misdemeanor for any person in connection with the offer or sale of any camping resort contracts willfully and knowingly:

~~((1))~~ (a) To make any untrue or misleading statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

~~((2))~~ (b) To employ any device, scheme, or artifice to defraud;

~~((3))~~ (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

~~((4))~~ (d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information;

~~((5))~~ (e) To breach any impound, escrow, trust, or other security arrangement provided for by this chapter;

~~((6))~~ (f) To cause the breaching of any trust, escrow, impound, or other arrangement placed in a registration for compliance with RCW 19.105.336; or

~~((7))~~ (g) To employ unlicensed salespersons or permit salespersons or employees to make misrepresentations or violate this chapter.

(3) No indictment or information may be returned under this chapter more than five years after the date of the event alleged to have been a violation.

Sec. 153. RCW 19.105.520 and 1988 c 159 s 26 are each amended to read as follows:

(1) Neither the fact that an application for registration nor the written disclosures required by this chapter have been filed, nor the fact that a camping resort contract offering has been effectively registered or exempted, constitutes a finding by the director that the offering or any document filed under this chapter is true, complete, and not misleading, nor does the fact mean that the director has determined in any way the merits or qualifications of or recommended or given approval to any person, camping resort operator, or camping resort contract transaction.

(2) It is a gross misdemeanor to make or cause to be made to any prospective purchaser any representation inconsistent with this section.

Sec. 154. RCW 19.110.120 and 1981 c 155 s 12 are each amended to read as follows:

(1) It is unlawful for any person to:

~~((1)-Tø)~~ (a) Make any untrue or misleading statement of a material fact or to omit to state a material fact in connection with the offer, sale, or lease of any business opportunity in the state; or

~~((2)-Tø)~~ (b) Employ any device, scheme, or artifice to defraud; or

~~((3)-Tø)~~ (c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

~~((4)-Tø)~~ (d) Knowingly file or cause to be filed with the director any document which contains any untrue or misleading information; or

~~((5)-Tø)~~ (e) Knowingly violate any rule or order of the director.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW.

Sec. 155. RCW 19.110.160 and 1981 c 155 s 16 are each amended to read as follows:

(1)(a) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may bring an action to enjoin any person from violating any provision of this chapter. Upon proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest and money or property, real or personal, which may have been acquired by means of an act prohibited or declared unlawful by this chapter.

The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(b) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(2) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(3) Any person who violates any provision of this chapter except as provided in subsection (1)(b) of this section, is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection may be imposed in any civil action brought by the attorney general or proper prosecuting attorney under this chapter and shall be deposited in the state treasury. Any action for recovery of such civil penalty shall be commenced within five years.

~~(4) ((Any person who violates RCW 19.110.050 or 19.110.070 is guilty of a gross misdemeanor. Any person who knowingly violates RCW 19.110.050 or 19.110.070 is guilty of a class B felony. Any violation of RCW 19.110.120 is a class B felony. No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.~~

~~(5))~~ The director may refer evidence concerning violations of this chapter to the attorney general or proper prosecuting attorney. The prosecuting attorney, or the attorney general pursuant to authority granted by RCW 10.01.190, 43.10.230, 43.10.232, and 43.10.234 may, with or without such reference, institute appropriate criminal proceedings.

NEW SECTION. Sec. 156. A new section is added to chapter 19.110 RCW to read as follows:

(1) Any person who violates RCW 19.110.050 or 19.110.070 is guilty of a gross misdemeanor.

(2) Any person who knowingly violates RCW 19.110.050 or 19.110.070 is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

Sec. 157. RCW 19.116.080 and 1990 c 44 s 9 are each amended to read as follows:

(1) Unlawful subleasing ((or unlawful transfer of an ownership interest in)) of a motor vehicle is a class C felony punishable under chapter 9A.20 RCW.

(2) Unlawful transfer of an ownership interest in a motor vehicle is a class C felony punishable under chapter 9A.20 RCW.

Sec. 158. RCW 19.146.050 and 1998 c 311 s 1 are each amended to read as follows:

(1) All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in

this state. All trust account funds collected under this chapter must remain on deposit in a trust account in the state of Washington until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers.

(2) The director shall make rules which: ~~((1))~~ (a) Direct mortgage brokers how to handle checks and other instruments that are received by the broker and that combine trust funds with other funds; and ~~((2))~~ (b) permit transfer of trust funds out of the trust account for payment of other costs only when necessary and only with the prior express written permission of the borrower.

(3) Any interest earned on the trust account shall be refunded or credited to the borrowers at closing.

(4) Trust accounts that are operated in a manner consistent with this section and any rules adopted by the director, are not considered gross receipts taxable under chapter 82.04 RCW.

(5) A person violating this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

Sec. 159. RCW 19.146.110 and 1993 c 468 s 20 are each amended to read as follows:

Any person who violates any provision of this chapter other than RCW 19.146.050 or any rule or order of the director ~~((shall be))~~ is guilty of a misdemeanor punishable under chapter 9A.20 RCW. ~~((Any person who violates RCW 19.146.050 shall be guilty of a class C felony under chapter 9A.20 RCW.))~~

Sec. 160. RCW 19.158.160 and 1989 c 20 s 16 are each amended to read as follows:

(1) Except as provided in RCW 19.158.150, any person who knowingly violates any provision of this chapter or who knowingly, directly or indirectly employs any device, scheme or artifice to deceive in connection with the offer or sale by any commercial telephone solicitor ~~((shall be))~~ is guilty of the following:

(a) If the value of a transaction made in violation of RCW 19.158.040(1) is:(=

~~((a))~~ less than fifty dollars, the person ~~((shall be))~~ is guilty of a misdemeanor;

(b) If the value of a transaction made in violation of RCW 19.158.040(1) is fifty dollars or more, then ~~((such))~~ the person ~~((shall be))~~ is guilty of a gross misdemeanor; and

(c) If the value of a transaction made in violation of RCW 19.158.040(1) is two hundred fifty dollars or more, then ~~((such))~~ the person ~~((shall be))~~ is guilty of a class C felony.

(2) When any series of transactions which constitute a violation of this section would, when considered separately, constitute a series of misdemeanors or gross misdemeanors because of the value of the transactions, and the series of transactions are part of a common scheme or plan, the transactions may be

aggregated in one count and the sum of the value of all the transactions shall be the value considered in determining whether the violations are to be punished as a class C felony or a gross misdemeanor.

Sec. 161. RCW 20.01.482 and 1986 c 178 s 1 are each amended to read as follows:

(1) The director shall have the authority to issue a notice of civil infraction if an infraction is committed in his or her presence or, if after investigation, the director has reasonable cause to believe an infraction has been committed.

(2) It ~~((shall be))~~ is a misdemeanor for any person to refuse to properly identify himself or herself for the purpose of issuance of a notice of infraction or to refuse to sign the written promise to appear or respond to a notice of infraction.

(3) Any person willfully violating a written and signed promise to respond to a notice of infraction ~~((shall be))~~ is guilty of a misdemeanor regardless of the disposition of the notice of infraction.

Sec. 162. RCW 20.01.490 and 1986 c 178 s 5 are each amended to read as follows:

(1) Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty. No monetary penalty so assessed may exceed one thousand dollars. The director shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and shall submit the schedule to the proper courts. Whenever a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid.

(2) Failure to pay any monetary penalties imposed under this chapter ~~((shall be punishable as))~~ is a misdemeanor.

Sec. 163. RCW 21.20.400 and 1979 ex.s. c 68 s 28 are each amended to read as follows:

Any person who willfully violates any provision of this chapter except RCW 21.20.350, or who willfully violates any rule or order under this chapter, or who willfully violates RCW 21.20.350 knowing the statement made to be false or misleading in any material respect, is guilty of a class B felony and shall upon conviction be fined not more than five thousand dollars or imprisoned not more than ten years, or both; but no person may be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

Sec. 164. RCW 21.30.140 and 1986 c 14 s 14 are each amended to read as follows:

A person who willfully violates this chapter, or who willfully violates a rule or order under this chapter, is guilty of a class B felony and shall upon conviction be fined not more than twenty thousand dollars or imprisoned not more than ten years, or both. However, no person may be imprisoned for the violation of a rule or order if the person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

Sec. 165. RCW 24.06.465 and 1994 c 287 s 11 are each amended to read as follows:

(1) Each corporation, domestic or foreign, which fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty as established and assessed by the secretary of state.

(2) Each corporation, domestic or foreign, which fails or refuses to answer truthfully and fully within the time prescribed by this chapter any interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, ~~((shall be deemed to be))~~ is guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed five hundred dollars on each count.

Sec. 166. RCW 26.04.210 and 1995 c 301 s 78 are each amended to read as follows:

(1) The county auditor, before a marriage license is issued, upon the payment of a license fee as fixed in RCW 36.18.010 shall require each applicant therefor to make and file in the auditor's office upon blanks to be provided by the county for that purpose, an affidavit showing that if an applicant is afflicted with any contagious sexually transmitted disease, the condition is known to both applicants, and that the applicants are the age of eighteen years or over. If the consent in writing is obtained of the father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female has attained the age of seventeen years or the male has attained the age of seventeen years. Such affidavit may be subscribed and sworn to before any person authorized to administer oaths.

(2) Anyone knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this section ~~((shall be deemed))~~ is guilty of perjury ~~((and punished as provided by the laws of the state of Washington))~~ under chapter 9A.72 RCW.

~~((2))~~ (3) The affidavit form shall be designed to require a statement that no contagious sexually transmitted disease is present or that the condition is known to both applicants, without requiring the applicants to state whether or not either or both of them are afflicted by such disease.

(4) Any person knowingly violating this section is guilty of a class C felony and shall be punished by a fine of not more than one thousand dollars, or by imprisonment in a state correctional facility for a period of not more than three years, or by both such fine and imprisonment.

Sec. 167. RCW 28A.405.040 and 1990 c 33 s 384 are each amended to read as follows:

(1) No person, whose certificate or permit authorizing him or her to teach in the common schools of this state has been revoked due to his or her failure to endeavor to impress on the minds of his or her pupils the principles of patriotism, or to train them up to the true comprehension of the rights, duty and dignity of American citizenship, shall be permitted to teach in any common school in this state.

(2) Any person teaching in any school in violation of this section, and any school director knowingly permitting any person to teach in any school in violation of this section is guilty of a misdemeanor.

Sec. 168. RCW 28A.635.050 and 1990 c 33 s 537 are each amended to read as follows:

(1) Except as otherwise provided in chapter 42.23 RCW, it shall be unlawful for any member of the state board of education, the superintendent of public instruction or any employee of the superintendent's office, any educational service district superintendent, any school district superintendent or principal, or any director of any school district, to request or receive, directly or indirectly, anything of value for or on account of his or her influence with respect to any act or proceeding of the state board of education, the office of the superintendent of public instruction, any office of educational service district superintendent or any school district, or any of these, when such act or proceeding shall inure to the benefit of those offering or giving the thing of value.

(2) Any willful violation of ~~((the provisions of))~~ this section ~~((shall be))~~ is a misdemeanor ~~((and punished as such))~~.

Sec. 169. RCW 28A.635.090 and 1996 c 321 s 3 are each amended to read as follows:

(1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, teacher, classified employee, person under contract with the school or school district, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies. Any such interference by force or violence committed by a student shall be grounds for immediate suspension or expulsion of the student.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment.

Sec. 170. RCW 28A.635.100 and 1990 c 33 s 541 are each amended to read as follows:

(1) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment.

Sec. 171. RCW 28B.10.570 and 1971 c 45 s 1 are each amended to read as follows:

(1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, faculty member or student of any university, college or community college who is in the peaceful discharge or conduct of his or her duties or studies.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment.

Sec. 172. RCW 28B.10.571 and 1971 c 45 s 2 are each amended to read as follows:

(1) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, faculty member or

student of any university, college or community college who is in the peaceful discharge or conduct of his or her duties or studies.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment.

Sec. 173. RCW 28B.10.572 and 1970 ex.s. c 98 s 3 are each amended to read as follows:

The crimes defined in RCW 28B.10.570 (~~through 28B.10.573~~) and 28B.10.571 shall not apply to school administrators or teachers who are engaged in the reasonable exercise of their disciplinary authority.

Sec. 174. RCW 28B.20.320 and 1969 ex.s. c 223 s 28B.20.320 are each amended to read as follows:

(1) There is hereby created an area of preserve of marine biological materials useful for scientific purposes, except when gathered for human food, and except, also, the plant nereocystis, commonly called "kelp." (~~Said~~) Such area of preserve shall consist of the salt waters and the beds and shores of the islands constituting San Juan county and of Cypress Island in Skagit county.

(2) No person shall gather such marine biological materials from the area of preserve, except upon permission first granted by the director of the Friday Harbor Laboratories of the University of Washington.

(3) A person gathering such marine biological materials contrary to the terms of this section is guilty of a misdemeanor.

Sec. 175. RCW 28B.85.030 and 1986 c 136 s 3 are each amended to read as follows:

(1) A degree-granting institution shall not operate and shall not grant or offer to grant any degree unless the institution has obtained current authorization from the board.

(2) Any person, group, or entity or any owner, officer, agent, or employee of such entity who willfully violates this section is guilty of a gross misdemeanor and shall be punished by a fine not to exceed one thousand dollars or by imprisonment in the county jail for a term not to exceed one year, or by both such fine and imprisonment. Each day on which a violation occurs constitutes a separate violation. The criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state.

Sec. 176. RCW 29.04.120 and 1999 c 298 s 2 are each amended to read as follows:

(1) Any person who uses registered voter data furnished under RCW 29.04.100 or 29.04.110 for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value (~~shall be~~) is guilty of a class C felony punishable by imprisonment in a state correctional facility for a period of not more than five years or a fine of not more than ten thousand dollars or both such fine and imprisonment, and shall be liable to each person provided such advertisement or solicitation, without the person's consent, for the nuisance value of such person having to dispose of it, which value is herein established at five dollars for each item mailed or delivered to the person's residence: PROVIDED, That any person who mails or delivers any advertisement, offer or solicitation for a

political purpose shall not be liable under this section, unless the person is liable under subsection (2) of this section. For purposes of this subsection, two or more attached papers or sheets or two or more papers which are enclosed in the same envelope or container or are folded together shall be deemed to constitute one item. Merely having a mailbox or other receptacle for mail on or near the person's residence shall not be any indication that such person consented to receive the advertisement or solicitation. A class action may be brought to recover damages under this section and the court may award a reasonable attorney's fee to any party recovering damages under this section.

(2) It shall be the responsibility of each person furnished data under RCW 29.04.100 or 29.04.110 to take reasonable precautions designed to assure that the data is not used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value: PROVIDED, That such data may be used for any political purpose. Where failure to exercise due care in carrying out this responsibility results in the data being used for such purposes, then such person shall be jointly and severally liable for damages under the provisions of subsection (1) of this section along with any other person liable under subsection (1) of this section for the misuse of such data.

Sec. 177. RCW 29.15.100 and 1965 c 9 s 29.18.070 are each amended to read as follows:

A person is guilty of a class B felony punishable according to chapter 9A.20 RCW who files a declaration of candidacy for any public office of:

- (1) A nonexistent or fictitious person; or
- (2) The name of any person not his or her true name; or
- (3) A name similar to that of an incumbent seeking reelection to the same office with intent to confuse and mislead the electors by taking advantage of the public reputation of the incumbent; or
- (4) A surname similar to one who has already filed for the same office, and whose political reputation is widely known, with intent to confuse and mislead the electors by capitalizing on the public reputation of the candidate who had previously filed.

Sec. 178. RCW 29.15.110 and 1965 c 9 s 29.18.080 are each amended to read as follows:

Any person who with intent to mislead or confuse the electors conspires with another person who has a surname similar to an incumbent seeking reelection to the same office, or to an opponent for the same office whose political reputation has been well established, by persuading such other person to file for such office with no intention of being elected, but to defeat the incumbent or the well known opponent, (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW. In addition thereto such person or persons shall be subject to a suit for civil damages the amount of which shall not exceed the salary which the injured person would have received had he or she been elected or reelected.

Sec. 179. RCW 29.36.370 and 2001 c 241 s 14 are each amended to read as follows:

(1) A person who willfully violates any provision of this chapter regarding the assertion or declaration of qualifications to receive or cast an absentee ballot or unlawfully casts a vote by absentee ballot is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Except as provided in chapter 29.85 RCW a person who willfully violates any other provision of this chapter is guilty of a misdemeanor.

Sec. 180. RCW 29.51.200 and 1981 c 34 s 1 are each amended to read as follows:

(1) Voting shall be secret except to the extent necessary to assist sensory or physically handicapped voters.

(2) If any voter declares in the presence of the election officers that because of sensory or physical handicap he or she is unable to register or record his or her vote, he or she may designate a person of his or her choice or two election officers from opposite political parties to enter the voting machine booth with him or her and record his or her vote as he or she directs.

(3) A person violating this section is guilty of a misdemeanor.

Sec. 181. RCW 29.51.230 and 1965 c 9 s 29.51.230 are each amended to read as follows:

(1) It ~~((shall be))~~ is unlawful for a voter to:

~~((1))~~ (a) Show his or her ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate for whom he or she has marked his or her vote;

~~((2))~~ (b) Receive a ballot from any person other than the election officer having charge of the ballots;

~~((3))~~ (c) Vote or offer to vote any ballot except one that he or she has received from the election officer having charge of the ballots;

~~((4))~~ (d) Place any mark upon his or her ballot by which it may afterward be identified as the one voted by him or her;

~~((5))~~ (e) Fail to return to the election officers any ballot he or she received from an election officer.

(2) A violation of ~~((any provision of))~~ this section ~~((shall be))~~ is a misdemeanor, punishable by a fine not exceeding one hundred dollars, plus costs of prosecution.

Sec. 182. RCW 29.79.440 and 1993 c 256 s 2 are each amended to read as follows:

(1) Every person who signs an initiative or referendum petition with any other than his or her true name ~~((shall be))~~ is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Every person who knowingly signs more than one petition for the same initiative or referendum measure or who signs an initiative or referendum petition knowing that he or she is not a legal voter or who makes a false statement as to his or her residence on any initiative or referendum petition, ~~((shall be))~~ is guilty of a gross misdemeanor ~~((punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021)).~~

Sec. 183. RCW 29.82.170 and 1984 c 170 s 11 are each amended to read as follows:

(1) Every person who signs a recall petition with any other than his or her true name is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Every person who knowingly ~~((1))~~ (a) signs more than one petition for the same recall, ~~((2))~~ (b) signs a recall petition when he or she is not a legal voter, or ~~((3))~~ (c) makes a false statement as to his or her residence on any recall petition is guilty of a gross misdemeanor.

(3) Every registration officer who makes any false report or certificate on any recall petition is guilty of a gross misdemeanor.

Sec. 184. RCW 30.04.240 and 1994 c 92 s 25 are each amended to read as follows:

(1) Every corporation doing a trust business shall maintain in its office a trust department in which it shall keep books and accounts of its trust business, separate and apart from its other business. Such books and accounts shall specify the cash, securities and other properties, real and personal, held in each trust, and such securities and properties shall be at all times segregated from all other securities and properties except as otherwise provided in this section.

(2) Any person connected with a bank or trust company who shall, contrary to this section or any other provision of law, commingle any funds or securities of any kind held by such corporation in trust, for safekeeping or as agent for another, with the funds or assets of the corporation ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

~~((2))~~ (3) Notwithstanding any other provisions of law, any fiduciary holding securities in its fiduciary capacity or any state bank, national bank, or trust company holding securities as fiduciary or as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities: (a) In a clearing corporation (as defined in Article 8 of the Uniform Commercial Code, chapter 62A.8 RCW); (b) within another state bank, national bank, or trust company having trust power whether located inside or outside of this state; or (c) within itself. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation or state bank, national bank, or trust company holding the securities as the depository, with any other such securities deposited in such clearing corporation or depository by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such state bank, national bank, or trust company as a fiduciary or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entries on the books of such clearing corporation, state bank, national bank, or trust company without physical delivery or alteration of certificates representing such securities. A state bank, national bank, or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state chartered banks and trust companies, the director and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A state bank, national bank, or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so

deposited by such state bank, national bank, or trust company in such clearing corporation or state bank, national bank, or trust company acting as such depository for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation or state bank, national bank, or trust company acting as such depository for its account as such fiduciary.

This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any state bank, national bank, or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on March 14, 1973 or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

Sec. 185. RCW 30.04.260 and 1974 ex.s. c 117 s 43 are each amended to read as follows:

(1) No trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, shall be permitted to act as executor, administrator, or guardian; and any trust company or other corporation whose officers or agents shall solicit legal business shall be ineligible for a period of one year thereafter to be appointed executor, administrator or guardian in any of the courts of this state.

(2) Any trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, and any officer, agent, or employee of any trust company or corporation who shall solicit legal business (~~shall be~~) is guilty of a gross misdemeanor.

Sec. 186. RCW 30.12.090 and 1955 c 33 s 30.12.090 are each amended to read as follows:

Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank or trust company or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank or trust company or shall make, state or publish any false statement of the amount of the assets or liabilities of any bank or trust company (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 187. RCW 30.12.100 and 1994 c 92 s 71 are each amended to read as follows:

Every officer, director or employee or agent of any bank or trust company who, for the purpose of concealing any fact or suppressing any evidence against himself or herself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank or trust company, or of the director, or of anyone connected with his or her office, (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 188. RCW 30.12.120 and 1955 c 33 s 30.12.120 are each amended to read as follows:

No corporation doing a trust business shall make any loan to any officer, or employee from its trust funds, nor shall it permit any officer, or employee to become indebted to it in any way out of its trust funds. Every officer, director, or employee of any such corporation, who knowingly violates ~~((any provision of))~~ this section, or who aids or abets any other person in any such violation, ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 189. RCW 30.42.290 and 1994 c 92 s 99 are each amended to read as follows:

(1) The director shall have the responsibility for assuring compliance with the provisions of this chapter. An alien bank that conducts business in this state in violation of any provisions of this chapter ~~((shall be))~~ is guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day that each such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state.

(2) Every person who shall knowingly subscribe to or make or cause to be made any false entry in the books of any alien bank office or bureau doing business in this state pursuant to this chapter or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any such office or bureau or shall make, state or publish any false statement of the amount of the assets or liabilities of any such office or bureau ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Every director or member of the governing body, officer, employee or agent of such alien bank operating an office or bureau in this state who conceals or destroys any fact or otherwise suppresses any evidence relating to a violation of this chapter is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(4) Any person who transacts business in this state on behalf of an alien bank which is subject to the provisions of this chapter, but which is not authorized to transact such business pursuant to this chapter is guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day for each day that such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state.

Sec. 190. RCW 30.44.110 and 1955 c 33 s 30.44.110 are each amended to read as follows:

Every transfer of its property or assets by any bank or trust company in this state, made in contemplation of insolvency, or after it shall have become insolvent, with a view to the preference of one creditor over another, or to prevent the equal distribution of its property and assets among its creditors, shall be void. Every director, officer, or employee making any such transfer ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 191. RCW 30.44.120 and 1955 c 33 s 30.44.120 are each amended to read as follows:

An officer, director or employee of any bank or trust company who shall fraudulently receive for it any deposit, knowing that such bank or trust company is insolvent, ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 192. RCW 31.12.724 and 1997 c 397 s 86 are each amended to read as follows:

(1) Every transfer of a credit union's property or assets, and every assignment by a credit union for the benefit of creditors, made in contemplation of insolvency, or after it has become insolvent, to intentionally prefer one creditor over another, or to intentionally prevent the equal distribution of its property and assets among its creditors, is void.

(2) Every credit union director, officer, or employee making any ~~((such))~~ transfer described in subsection (1) of this section is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) An officer, director, or employee of a credit union who fraudulently receives any share or deposit on behalf of the credit union, knowing that the credit union is insolvent, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 193. RCW 31.12.850 and 1997 c 397 s 87 are each amended to read as follows:

(1)(a) It is unlawful for a director, supervisory committee member, officer, employee, or agent of a credit union to knowingly violate or consent to a violation of this chapter.

(b) Unless otherwise provided by law, a violation of this subsection is a misdemeanor under chapter 9A.20 RCW.

(2)(a) It is unlawful for a person to perform any of the following acts:

~~((a))~~ (i) To knowingly subscribe to, make, or cause to be made a false statement or entry in the books of a credit union;

~~((b))~~ (ii) To knowingly make a false statement or entry in a report required to be made to the director; or

~~((c))~~ (iii) To knowingly exhibit a false or fictitious paper, instrument, or security to a person authorized to examine a credit union.

(b) A violation of this subsection is a class C felony under chapter 9A.20 RCW.

Sec. 194. RCW 32.04.100 and 1955 c 13 s 32.04.100 are each amended to read as follows:

Every person who knowingly subscribes to or makes or causes to be made any false statement or false entry in the books of any savings bank, or knowingly subscribes to or exhibits any false or fictitious security, document or paper, with the intent to deceive any person authorized to examine into the affairs of any savings bank, or makes or publishes any false statement of the amount of the assets or liabilities of any such savings bank ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 195. RCW 32.04.110 and 1994 c 92 s 299 are each amended to read as follows:

Every trustee, officer, employee, or agent of any savings bank who for the purpose of concealing any fact suppresses any evidence against himself or herself, or against any other person, or who abstracts, removes, mutilates, destroys, or secretes any paper, book, or record of any savings bank, or of the director, or anyone connected with his or her office ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 196. RCW 32.24.080 and 1994 c 92 s 346 are each amended to read as follows:

(1) Every transfer of its property or assets by any mutual savings bank in this state, made ~~((+))~~ (a) after it has become insolvent, ~~((2))~~ (b) within ninety days before the date the director takes possession of such savings bank under RCW 32.24.050 or the federal deposit insurance corporation is appointed as receiver or liquidator of such savings bank under RCW 32.24.090, and ~~((3))~~ (c) with the view to the preference of one creditor over another or to prevent equal distribution of its property and assets among its creditors, shall be void.

(2) Every trustee, officer, or employee making any ~~((such))~~ transfer ~~((shall be))~~ described in subsection (1) of this section is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 197. RCW 33.24.360 and 1994 c 92 s 447 are each amended to read as follows:

(1) It is unlawful for any acquiring party to acquire control of an association until thirty days after the date of filing with the director an application containing substantially all of the following information and any additional information that the director may prescribe as necessary or appropriate in the public interest or for the protection of deposit account holders, borrowers or stockholders:

(a) The identity, character, and experience of each acquiring party by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each acquiring party involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which such acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction and the names of the parties. However, where a source of funds is a loan made in the lender's ordinary course of business, if the person filing the statement so requests, the director shall not disclose the name of the lender to the public;

(e) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the association to sell its assets, to merge it with any company, or to make any other major changes in its business or corporate structure or management;

(f) The identification of any persons employed, retained or to be compensated by the acquiring party, or by any person on his or her behalf, who makes solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and brief description of the terms of such employment, retainer, or arrangements for compensation;

(g) Copies of all invitations for tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(2) When an unincorporated company is required to file the statements under subsection (1)(a), (b), and (f) of this section, the director may require that the information be given with respect to each partner of a partnership or limited partnership, by each member of a syndicate or group, and by each person who

controls a partner or member. When an incorporated company is required to file the statements under subsection (1)(a), (b), and (f) of this section, the director may require that the information be given for the corporation and for each officer and director of the corporation and for each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation. If any tender offer, request or invitation for tenders or other agreement to acquire control is proposed to be made by means of a registration statement under the federal securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77a), as amended, or in circumstances requiring the disclosure of similar information under the federal securities exchange act of 1934 (48 Stat. 881; 15 U.S.C. Sec. 77b), as amended, or in an application filed with the federal home loan bank board requiring similar disclosure, such registration statement or application may be filed with the director in lieu of the requirements of this section.

~~((2))~~ (3) The director shall give notice by mail to all associations doing business within the state of the filing of an application to acquire control of an association. The association shall transmit a check to the director for two hundred dollars when filing the application to cover the expense of notification. Persons interested in protesting the application may contact the director in person or by writing prior to a date which shall be given in the notice.

(4) Any person who willfully violates this section, or any regulation or order thereunder, is guilty of a misdemeanor and shall be fined not more than one thousand dollars for each day during which the violation continues.

Sec. 198. RCW 35.32A.090 and 1967 c 7 s 11 are each amended to read as follows:

(1) There shall be no orders, authorizations, allowances, contracts or payments made or attempted to be made in excess of the expenditure allowances authorized in the final budget as adopted or modified as provided in this chapter, and any such attempted excess expenditure shall be void and shall never be the foundation of a claim against the city.

(2) Any public official authorizing, auditing, allowing, or paying any claims or demands against the city in violation of the provisions of this chapter shall be jointly and severally liable to the city in person and upon their official bonds to the extent of any payments upon such claims or demands.

(3) Any person violating any of the provisions of this chapter, in addition to any other liability or penalty provided therefor, ~~((shall be))~~ is guilty of a misdemeanor.

Sec. 199. RCW 35.36.040 and 1965 c 7 s 35.36.040 are each amended to read as follows:

(1) The officer whose duty it is to cause any bonds to be printed, engraved, or lithographed, shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds to be printed, engraved, or lithographed and the manner of numbering them.

(2) Every printer, engraver, or lithographer who prints, engraves, or lithographs a greater number of bonds than that specified or who prints, engraves, or lithographs more than one bond bearing the same number ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 200. RCW 35A.36.040 and 1967 ex.s. c 119 s 35A.36.040 are each amended to read as follows:

(1) The officer of a code city whose duty it is to cause any bonds to be printed, engraved, or lithographed, shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds to be printed, engraved or lithographed and the manner of numbering them.

(2) Every printer, engraver, or lithographer who knowingly prints, engraves, or lithographs a greater number of bonds than that specified or who knowingly prints, engraves, or lithographs more than one bond bearing the same number ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 201. RCW 36.18.170 and 1992 c 7 s 33 are each amended to read as follows:

Any salaried county or precinct officer, who fails to pay to the county treasury all sums that have come into the officer's hands for fees and charges for the county, or by virtue of the officer's office, whether under the laws of this state or of the United States, ~~((shall be))~~ is guilty of ((embezzlement)) a class C felony, and upon conviction thereof shall be punished by imprisonment in a state correctional facility not less than one year nor more than three years: PROVIDED, That upon conviction, his or her office shall be declared to be vacant by the court pronouncing sentence.

Sec. 202. RCW 36.28.060 and 1963 c 4 s 36.28.060 are each amended to read as follows:

(1) The sheriff shall make duplicate receipts for all payments for his or her services specifying the particular items thereof, at the time of payment, whether paid by virtue of the laws of this state or of the United States. Such duplicate receipts shall be numbered consecutively for each month commencing with number one. One of such receipts shall have written or printed upon it the word "original"; and the other shall have written or printed upon it the word "duplicate."

(2) At the time of payment of any fees, the sheriff shall deliver to the person making payment, either personally or by mail, the copy of the receipt designated "duplicate."

(3) The receipts designated "original" for each month shall be attached to the verified statement of fees for the corresponding month and the sheriff shall file with the county treasurer of his or her county all original receipts for each month with such verified statement.

(4) A sheriff shall not receive his or her salary for the preceding month until the provisions of this section have been complied with.

(5) Any sheriff violating this section, or failing to perform any of the duties required thereby, is guilty of a misdemeanor and shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense.

Sec. 203. RCW 36.29.060 and 1991 c 245 s 6 are each amended to read as follows:

(1) Whenever the county treasurer has funds belonging to any fund upon which "interest-bearing" warrants are outstanding, the treasurer shall have the discretion to call warrants. The county treasurer shall give notice as provided for in RCW 36.29.010(4). The treasurer shall pay on demand, in the order of their

issue, any warrants when there shall be in the treasury sufficient funds applicable to such payment.

(2) Any treasurer who knowingly fails to call for or pay any warrant in accordance with this section is guilty of a misdemeanor and shall be fined not less than twenty-five dollars nor more than five hundred dollars, and such conviction shall be sufficient cause for removal from office.

Sec. 204. RCW 36.32.210 and 1997 c 245 s 3 are each amended to read as follows:

(1) Each board of county commissioners of the several counties of the state of Washington shall, on the first Monday of March of each year, file with the auditor of the county a statement verified by oath showing for the twelve months period ending December 31st of the preceding year, the following:

((+)) (a) A full and complete inventory of all capitalized assets shall be kept in accordance with standards established by the state auditor. This inventory shall be segregated to show the following subheads:

((+)) (i) The assets, including equipment, on hand, together with a statement of the date when acquired, the amount paid therefor, the estimated life thereof and a sufficient description to fully identify such property;

((b)) (ii) All equipment of every kind or nature sold or disposed of in any manner during such preceding twelve months period, together with the name of the purchaser, the amount paid therefor, whether or not the same was sold at public or private sale, the reason for such disposal and a sufficient description to fully identify the same; and

((e)) (iii) All the equipment purchased during ((said)) the period, together with the date of purchase, the amount paid therefor, whether or not the same was bought under competitive bidding, the price paid therefor and the probable life thereof, the reason for making the purchase and a sufficient description to fully identify such property; and

((2)) (b) The person to whom such money or any part thereof was paid and why so paid and the date of such payment.

(2) Inventories shall be filed with the county auditor as a public record and shall be open to the inspection of the public.

(3) Any county commissioner failing to file such statement or willfully making any false or incorrect statement therein or aiding or abetting in the making of any false or incorrect statement is guilty of a gross misdemeanor.

(4) It is the duty of the prosecuting attorney of each county to within three days from the calling to his or her attention of any violation to institute proceedings against such offending official and in addition thereto to prosecute appropriate action to remove such commissioner from office.

(5) Any taxpayer of such county is hereby authorized to institute the action in conjunction with or independent of the action of the prosecuting attorney.

Sec. 205. RCW 36.68.080 and 1979 ex.s. c 136 s 36 are each amended to read as follows:

(1) Except as otherwise provided in this section, any person violating any rules or regulations adopted by the board of county commissioners relating to parks, playgrounds, or other recreational facilities ((shall be)) is guilty of a misdemeanor(~~(: PROVIDED, That)~~).

~~(2)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction((~~-except that~~)).~~

~~(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.~~

Sec. 206. RCW 36.69.180 and 1979 ex.s. c 136 s 37 are each amended to read as follows:

~~(1) Except as otherwise provided in this section, the violation of any of the rules or regulations of a park and recreation district adopted by its board for the preservation of order, control of traffic, protection of life or property, or for the regulation of the use of park property ((~~shall constitute~~)) is a misdemeanor((~~PROVIDED, That~~)).~~

~~(2)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction((~~-except that~~)).~~

~~(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.~~

Sec. 207. RCW 36.71.060 and 1963 c 4 s 36.71.060 are each amended to read as follows:

Every peddler who sells or offers for sale or exposes for sale, at public or private sale any goods, wares, or merchandise without a county license, is guilty of a misdemeanor and shall be punished by imprisonment for not less than thirty days nor more than ninety days or by fine of not less than fifty dollars nor more than two hundred dollars or by both.

Sec. 208. RCW 36.75.130 and 1963 c 4 s 36.75.130 are each amended to read as follows:

~~(1) No person shall be permitted to build or construct any approach to any county road without first obtaining permission therefor from the board.~~

~~(2) The boards of the several counties of the state may adopt reasonable rules for the construction of approaches which, when complied with, shall entitle a person to build or construct an approach from any abutting property to any county road. The rules may include provisions for the construction of culverts under the approaches, the depth of fills over the culverts, and for such other drainage facilities as the board deems necessary. The construction of approaches, culverts, fills, or such other drainage facilities as may be required, shall be under the supervision of the county road engineer, and all such construction shall be at the expense of the person benefited by the construction.~~

~~(3) Any person violating this section is guilty of a misdemeanor.~~

Sec. 209. RCW 38.32.090 and 1989 c 19 s 43 are each amended to read as follows:

Any physician who shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service ((~~shall be~~)) is guilty of perjury under chapter 9A.72 RCW and, upon conviction, as an additional penalty, shall forfeit forever his or her license and right to practice in this state.

Sec. 210. RCW 38.32.120 and 1989 c 19 s 44 are each amended to read as follows:

(1) The commanding officer at any drill, parade, encampment or other duty may place in arrest for the time of such drill, parade, encampment or other duty any person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those on duty, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and may prohibit and prevent the sale or use of all spirituous liquors, wines, ale or beer, or holding of huckster or auction sales, and all gambling therein, and remove disorderly persons beyond the limits of such parade or encampment, or within a distance of two miles therefrom, and the commanding officer shall have full authority to abate as common nuisances all disorderly places, and bar all unauthorized sales within such limits.

(2) Any person violating (~~any of the provisions of~~) this section, or any order issued in pursuance thereof, (~~shall be~~) is guilty of a misdemeanor(;) and upon conviction shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or (~~by~~) both such fine and imprisonment.

(3) No license or renewal thereof shall be issued or granted to any person, firm or corporation for the sale of intoxicating or spirituous liquors within a distance of three hundred feet from any armory used by the state of Washington for military purposes, without the approval of the adjutant general.

Sec. 211. RCW 38.52.150 and 1984 c 38 s 14 are each amended to read as follows:

(1) It shall be the duty of every organization for emergency management established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules, and regulations as may be made by the governor under authority of this chapter. Each such organization shall have available for inspection at its office all orders, rules, and regulations made by the governor, or under his or her authority.

(2)(a) Except as provided in (b) of this subsection, every violation of any rule, regulation, or order issued under the authority of this chapter (~~shall constitute~~) is a misdemeanor (~~and shall be punishable as such: PROVIDED, That whenever any person shall commit~~).

(b) A second offense hereunder the same (~~shall constitute~~) is a gross misdemeanor (~~and shall be punishable as such~~).

Sec. 212. RCW 39.44.101 and 1955 c 375 s 2 are each amended to read as follows:

Every printer, engraver, or lithographer, who with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the issuing authority, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 213. RCW 39.62.040 and 1969 c 86 s 4 are each amended to read as follows:

Any person who with intent to defraud uses on a public security or an instrument of payment:

(1) A facsimile signature, or any reproduction of it, of any authorized officer, or

(2) Any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or of any of its political subdivisions is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 214. RCW 40.16.010 and 1992 c 7 s 34 are each amended to read as follows:

Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Sec. 215. RCW 40.16.020 and 1992 c 7 s 35 are each amended to read as follows:

Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraudulently appropriate to the officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

Sec. 216. RCW 40.16.030 and 1992 c 7 s 36 are each amended to read as follows:

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

Sec. 217. RCW 41.26.062 and 1972 ex.s. c 131 s 10 are each amended to read as follows:

Any employer, member or beneficiary who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in an attempt to defraud the retirement system, (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 218. RCW 41.32.055 and 1947 c 80 s 67 are each amended to read as follows:

Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud such system as a result of such act, (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 219. RCW 42.20.070 and 1992 c 7 s 37 are each amended to read as follows:

Every public officer, and every other person receiving money on behalf of for or on account of the people of the state or of any department of the state

government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town, or any school, diking, drainage, or irrigation district, who:

(1) ~~((Shall))~~ Appropriates to his or her own use or the use of any person not entitled thereto, without authority of law, any money so received by him or her as such officer or otherwise; or

(2) ~~((Shall))~~ Knowingly keeps any false account, or makes any false entry or erasure in any account, of or relating to any money so received by him or her; or

(3) ~~((Shall))~~ Fraudulently alters, ~~((falsify))~~ falsifies, conceals, destroys, or obliterates any such account; or

(4) ~~((Shall))~~ Willfully omits or refuses to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, city, town, or such school, diking, drainage, or irrigation district or to the proper officer or authority empowered to demand and receive the same, any money received by him or her as such officer when it is a duty imposed upon him or her by law to pay over and account for the same,

is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

Sec. 220. RCW 42.20.090 and 1992 c 7 s 38 are each amended to read as follows:

Every state, county, city, or town treasurer who willfully misappropriates any moneys, funds, or securities received by or deposited with him or her as such treasurer, or who shall be guilty of any other malfeasance or willful neglect of duty in his or her office, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years or by a fine of not more than five thousand dollars.

Sec. 221. RCW 43.01.100 and 1965 c 8 s 43.01.100 are each amended to read as follows:

(1) The inclusion of any question relative to an applicant's race or religion in any application blank or form for employment or license required to be filled in and submitted by an applicant to any department, board, commission, officer, agent, or employee of this state or the disclosure on any license of the race or religion of the licensee is hereby prohibited.

(2) A person violating this section is guilty of a misdemeanor.

Sec. 222. RCW 43.06.220 and 1969 ex.s. c 186 s 3 are each amended to read as follows:

(1) The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:

~~((+))~~ (a) Any person being on the public streets, or in the public parks, or at any other public place during the hours declared by the governor to be a period of curfew;

~~((2))~~ (b) Any number of persons, as designated by the governor, from assembling or gathering on the public streets, parks, or other open areas of this state, either public or private;

~~((3))~~ (c) The manufacture, transfer, use, possession or transportation of a molotov cocktail or any other device, instrument or object designed to explode or produce uncontained combustion;

~~((4))~~ (d) The transporting, possessing or using of gasoline, kerosene, or combustible, flammable, or explosive liquids or materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;

~~((5))~~ (e) The possession of firearms or any other deadly weapon by a person (other than a law enforcement officer) in a place other than that person's place of residence or business;

~~((6))~~ (f) The sale, purchase or dispensing of alcoholic beverages;

~~((7))~~ (g) The sale, purchase or dispensing of other commodities or goods, as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace;

~~((8))~~ (h) The use of certain streets, highways or public ways by the public; and

~~((9))~~ (i) Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

(2) In imposing the restrictions provided for by RCW 43.06.010, and 43.06.200 through 43.06.270, the governor may impose them for such times, upon such conditions, with such exceptions and in such areas of this state he or she from time to time deems necessary.

(3) Any person willfully violating any provision of an order issued by the governor under this section (~~shall be~~) is guilty of a gross misdemeanor.

Sec. 223. RCW 43.06.230 and 1992 c 7 s 39 are each amended to read as follows:

After the proclamation of a state of emergency as provided in RCW 43.06.010, any person who maliciously destroys or damages any real or personal property or maliciously injures another (~~shall be~~) is guilty of a class B felony and upon conviction thereof shall be imprisoned in a state correctional facility for not less than two years nor more than ten years.

Sec. 224. RCW 43.08.140 and 1992 c 7 s 40 are each amended to read as follows:

If any person holding the office of state treasurer fails to account for and pay over all moneys in his or her hands in accordance with law, or unlawfully converts to his or her own use in any way whatever, or uses by way of investment in any kind of property, or loans without authority of law, any portion of the public money intrusted to him or her for safekeeping, transfer, or disbursement, or unlawfully converts to his or her own use any money that comes into his or her hands by virtue of his or her office, the person (~~shall be~~) is guilty of (~~embezzlement~~) a class B felony, and upon conviction thereof, shall be imprisoned in a state correctional facility not exceeding fourteen years, and fined a sum equal to the amount embezzled.

Sec. 225. RCW 43.09.165 and 1995 c 301 s 5 are each amended to read as follows:

(1) The state auditor, his or her employees and every person legally appointed to perform such service, may issue subpoenas and compulsory process and direct the service thereof by any constable or sheriff, compel the attendance of witnesses and the production of books and papers before him or her at any designated time and place, and may administer oaths.

(2) When any person summoned to appear and give testimony neglects or refuses to do so, or neglects or refuses to answer any question that may be put to him or her touching any matter under examination, or to produce any books or papers required, the person making such examination shall apply to a superior court judge of the proper county to issue a subpoena for the appearance of such person before him or her; and the judge shall order the issuance of a subpoena for the appearance of such person forthwith before him or her to give testimony; and if any person so summoned fails to appear, or appearing, refuses to testify, or to produce any books or papers required, he or she shall be subject to like proceedings and penalties for contempt as witnesses in the superior court.

(3) Willful false swearing in any such examination (~~((shall be))~~) is perjury (~~((and punishable as such))~~) under chapter 9A.72 RCW.

Sec. 226. RCW 43.19.1939 and 1965 c 8 s 43.19.1939 are each amended to read as follows:

(1) When any competitive bid or bids are to be or have been solicited, requested, or advertised for by the state under the provisions of RCW 43.19.190 through 43.19.1939, it shall be unlawful for any person acting for himself, herself, or as agent of another, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another for the purpose of inducing such other person to refrain from submitting any bids upon such purchase or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he or she individually or as an agent or officer of another will refrain from bidding upon such contract, or that he or she will on behalf of himself, herself, or such others submit or permit another to submit for him or her any bid upon such purchase in such sum as to eliminate full and unrestricted competition thereon.

(2) Any person violating (~~((any provision of))~~) this section (~~((shall be))~~) is guilty of a misdemeanor.

Sec. 227. RCW 43.22.300 and 1965 c 8 s 43.22.300 are each amended to read as follows:

(1) The director may issue subpoenas, administer oaths and take testimony in all matters relating to the duties herein required, such testimony to be taken in some suitable place in the vicinity to which testimony is applicable.

(2) Witnesses subpoenaed and testifying before any officer of the department shall be paid the same fees as witnesses before a superior court, such payment to be made from the funds of the department.

(3) Any person duly subpoenaed under the provisions of this section who willfully neglects or refuses to attend or testify at the time and place named in the subpoena, (~~((shall be))~~) is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

Sec. 228. RCW 43.22.340 and 2002 c 268 s 6 are each amended to read as follows:

(1) The director shall adopt specific rules for conversion vending units and medical units. The rules for conversion vending units and medical units shall be established to protect the occupants from fire; to address other life safety issues; and to ensure that the design and construction are capable of supporting any concentrated load of five hundred pounds or more.

(2) The director of labor and industries shall adopt rules governing safety of body and frame design, and the installation of plumbing, heating, and electrical equipment in mobile homes, commercial coaches, recreational vehicles, and/or park trailers: PROVIDED, That the director shall not prescribe or enforce rules governing the body and frame design of recreational vehicles and park trailers until after the American National Standards Institute shall have published standards and specifications upon this subject. The rules shall be reasonably consistent with recognized and accepted principles of safety for body and frame design and plumbing, heating, and electrical installations, in order to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe body and frame design, construction, plumbing, heating, electrical, and other equipment and shall correlate with and, so far as practicable, conform to the then current standards and specifications of the American National Standards Institute standards AI19.1 for mobile homes and commercial coaches, AI19.2 for recreational vehicles, and AI19.5 for park trailers.

(3) Except as provided in RCW 43.22.436, it shall be unlawful for any person to lease, sell or offer for sale, within this state, any mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers manufactured after January 1, 1968, containing plumbing, heating, electrical, or other equipment, and after July 1, 1970, body and frame design or construction, unless such equipment, design, or construction meets the requirements of the rules provided for in this section.

(4) Any person violating this section is guilty of a misdemeanor. Each day upon which a violation occurs shall constitute a separate violation.

Sec. 229. RCW 43.30.310 and 1987 c 380 s 14 are each amended to read as follows:

(1) For the promotion of the public safety and the protection of public property, the department of natural resources may, in accordance with chapter 34.05 RCW, issue, promulgate, adopt, and enforce rules pertaining to use by the public of state-owned lands and property which are administered by the department.

(2)(a) Except as otherwise provided in this subsection, a violation of any rule adopted under this section ((shall constitute)) is a misdemeanor ((unless the department specifies)).

(b) Except as provided in (c) of this subsection, the department may specify by rule, when not inconsistent with applicable statutes, that violation of ((the)) such a rule is an infraction under chapter 7.84 RCW: PROVIDED, That violation of a rule relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction((-except that)).

(c) Violation of such a rule equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(3) The commissioner of public lands and such of his or her employees as he or she may designate shall be vested with police powers when enforcing:

~~((+))~~ (a) The rules of the department adopted under this section; or

~~((2))~~ (b) The general criminal statutes or ordinances of the state or its political subdivisions where enforcement is necessary for the protection of state-owned lands and property.

Sec. 230. RCW 43.43.856 and 1973 1st ex.s. c 202 s 4 are each amended to read as follows:

(1)(a) On and after April 26, 1973, it shall be unlawful for any person to divulge specific investigative information pertaining to activities related to organized crime which he or she has obtained by reason of public employment with the state of Washington or its political subdivisions unless such person is authorized or required to do so by operation of state or federal law.

(b) Any person violating (a) of this subsection (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Except as provided in RCW 43.43.854, or pursuant to the rules of the supreme court of Washington, all of the information and data collected and processed by the organized crime intelligence unit shall be confidential and not subject to examination or publication pursuant to chapter 42.17 RCW (Initiative Measure No. 276).

(3) The chief of the Washington state patrol shall prescribe such standards and procedures relating to the security of the records and files of the organized crime intelligence unit, as he or she deems to be in the public interest with the advice of the governor and the board.

Sec. 231. RCW 43.70.185 and 2001 c 253 s 2 are each amended to read as follows:

(1) The department may enter and inspect any property, lands, or waters, of this state in or on which any marine species are located or from which such species are harvested, whether recreationally or for sale or barter, and any land or water of this state which may cause or contribute to the pollution of areas in or on which such species are harvested or processed. The department may take any reasonably necessary samples to determine whether such species or any lot, batch, or quantity of such species is safe for human consumption.

(2) If the department determines that any species or any lot, batch, or other quantity of such species is unsafe for human consumption because consumption is likely to cause actual harm or because consumption presents a potential risk of substantial harm, the department may, by order under chapter 34.05 RCW, prohibit or restrict the commercial or recreational harvest or landing of any marine species except the recreational harvest of shellfish as defined in chapter 69.30 RCW if taken from privately owned tidelands.

(3) It is unlawful to harvest any marine species in violation of a departmental order prohibiting or restricting such harvest under this section or to possess or sell any marine species so harvested.

(4)(a) Any person who sells any marine species taken in violation of this section is guilty of a gross misdemeanor and subject to the penalties provided in RCW 69.30.140 and 69.30.150.

(b) Any person who harvests or possesses marine species taken in violation of this section is guilty of a civil infraction and is subject to the penalties provided in RCW 69.30.150.

(c) Notwithstanding this section, any person who harvests, possesses, sells, offers to sell, culls, shucks, or packs shellfish is subject to the penalty provisions of chapter 69.30 RCW.

(d) Charges shall not be brought against a person under both chapter 69.30 RCW and this section in connection with this same action, incident, or event.

(5) The criminal provisions of this section are subject to enforcement by fish and wildlife officers or ex officio fish and wildlife officers as defined in RCW 77.08.010.

(6) As used in this section, marine species include all fish, invertebrate or plant species which are found during any portion of the life cycle of those species in the marine environment.

Sec. 232. RCW 46.08.170 and 1987 c 202 s 213 are each amended to read as follows:

(1) ~~Except as provided in subsection (2) of this section, any violation of a rule or regulation prescribed under RCW 46.08.150 is a traffic infraction, and the district courts of Thurston county shall have jurisdiction over such offenses: PROVIDED, That violation of a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction((; except that)).~~

(2) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

Sec. 233. RCW 46.09.130 and 1994 c 264 s 35 are each amended to read as follows:

(1) No person may operate a nonhighway vehicle in such a way as to endanger human life.

(2) No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle except by permit issued by the director of fish and wildlife under RCW 77.32.237: PROVIDED, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

(3) Violation of this section is a gross misdemeanor.

Sec. 234. RCW 46.10.130 and 1994 c 264 s 37 are each amended to read as follows:

(1) No person shall operate a snowmobile in such a way as to endanger human life.

(2) No person shall operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal, nor shall any person carry any loaded weapon upon, nor hunt from, any snowmobile except by permit issued by the director of fish and wildlife under RCW 77.32.237.

(3) Any person violating ~~((the provisions of))~~ this section ~~((shall be))~~ is guilty of a gross misdemeanor.

Sec. 235. RCW 46.12.070 and 2002 c 245 s 2 are each amended to read as follows:

(1) Upon the destruction of any vehicle issued a certificate of ownership under this chapter or a license registration under chapter 46.16 RCW, the registered owner and the legal owner shall forthwith and within fifteen days

thereafter forward and surrender the certificate to the department, together with a statement of the reason for the surrender and the date and place of destruction. Failure to notify the department or the possession by any person of any such certificate for a vehicle so destroyed, after fifteen days following its destruction, is prima facie evidence of violation of the provisions of this chapter and constitutes a gross misdemeanor.

(2) Any insurance company settling an insurance claim on a vehicle that has been issued a certificate of ownership under this chapter or a certificate of license registration under chapter 46.16 RCW as a total loss, less salvage value, shall notify the department thereof within fifteen days after the settlement of the claim. Notification shall be provided regardless of where or in what jurisdiction the total loss occurred.

(3) For a motor vehicle having a model year designation at least six years before the calendar year of destruction, the notification to the department must include a statement of whether the retail fair market value of the motor vehicle immediately before the destruction was at least the then market value threshold amount as defined in RCW 46.12.005.

Sec. 236. RCW 46.12.210 and 1961 c 12 s 46.12.210 are each amended to read as follows:

Any person who ~~((shall))~~ knowingly makes any false statement of a material fact, either in his or her application for the certificate of ownership or in any assignment thereof, or who with intent to procure or pass ownership to a vehicle which he or she knows or has reason to believe has been stolen, ~~((shall))~~ receives or transfers possession of the same from or to another or who ~~((shall have))~~ has in his or her possession any vehicle which he or she knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his or her duty as such officer, ~~((shall be))~~ is guilty of a class B felony and upon conviction shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than ten years, or both such fine and imprisonment. This provision shall not exclude any other offenses or penalties prescribed by any existing or future law for the larceny or unauthorized taking of a motor vehicle.

Sec. 237. RCW 46.12.220 and 1967 c 32 s 12 are each amended to read as follows:

Any person who ~~((shall))~~ alters or forges or causes to be altered or forged any certificate issued by the director pursuant to the provisions of this chapter, or any assignment thereof, or any release or notice of release of any encumbrance referred to therein, or who shall hold or use any such certificate or assignment, or release or notice of release, knowing the same to have been altered or forged, ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 238. RCW 46.16.010 and 2000 c 229 s 1 are each amended to read as follows:

(1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided.

(2) Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof must be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred.

(3) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

~~((2))~~ (4) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and a fine equal to four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

~~((3))~~ (5) These provisions shall not apply to the following vehicles:

(a) Electric-assisted bicycles;

(b) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(c) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(d) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(e) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors,

ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

~~((4))~~ (6) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

Sec. 239. RCW 46.44.175 and 1995 c 38 s 11 are each amended to read as follows:

(1) Failure of any person or agent acting for a person who causes to be moved or moves a mobile home as defined in RCW 46.04.302 upon public highways of this state and failure to comply with any of the provisions of RCW 46.44.170 and 46.44.173 is a traffic infraction for which a penalty of not less than one hundred dollars or more than five hundred dollars shall be assessed. In addition to the above penalty, the department of transportation or local authority may withhold issuance of a special permit or suspend a continuous special permit as provided by RCW 46.44.090 and 46.44.093 for a period of not less than thirty days.

(2) Any person who shall alter, reuse, transfer, or forge the decal required by RCW 46.44.170, or who shall display a decal knowing it to have been forged, reused, transferred, or altered, shall be guilty of a gross misdemeanor.

(3) Any person or agent who is denied a special permit or whose special permit is suspended may upon request receive a hearing before the department of

transportation or the local authority having jurisdiction. The department or the local authority after such hearing may revise its previous action.

Sec. 240. RCW 46.44.180 and 1980 c 153 s 3 are each amended to read as follows:

(1) It is unlawful for a person, other than an employee of a dealer or other principal licensed to transport mobile homes within this state acting within the course of employment with the principal, to operate a pilot vehicle accompanying a mobile home, as defined in RCW 46.04.302, being transported on the public highways of this state, without maintaining insurance for the pilot vehicle in the minimum amounts of:

(a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;

(b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and

(c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

(2) Satisfactory evidence of the insurance shall be carried at all times by the operator of the pilot vehicle, which evidence shall be displayed upon demand by a police officer.

(3) Failure to maintain the insurance as required by this section is a gross misdemeanor.

(4) Failure to carry or disclose the evidence of the insurance as required by this section is a misdemeanor.

Sec. 241. RCW 46.52.010 and 1979 ex.s. c 136 s 79 are each amended to read as follows:

(1) The operator of any vehicle which collided with any other vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the operator and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice, giving the name and address of the operator and of the owner of the vehicle striking such other vehicle.

(2) The driver of any vehicle involved in an accident resulting only in damage to property fixed or placed upon or adjacent to any public highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the name and address of the operator and owner of the vehicle striking such property, or shall leave in a conspicuous place upon the property struck a written notice, giving the name and address of the operator and of the owner of the vehicle so striking the property, and such person shall further make report of such accident as in the case of other accidents upon the public highways of this state.

(3) Any person violating (~~the provisions of~~) this section is guilty of a misdemeanor.

Sec. 242. RCW 46.52.090 and 1983 c 142 s 1 are each amended to read as follows:

(1) Any person, firm, corporation, or association engaged in the business of repairs of any kind to vehicles or any person, firm, corporation, or association which may at any time engage in any kind of major repair, restoration, or

substantial alteration to a vehicle required to be licensed or registered under this title shall maintain verifiable records regarding the source of used major component parts used in such repairs, restoration, or alteration. Satisfactory records include but are not limited to personal identification of the seller if such parts were acquired from other than a ~~((motor))~~ vehicle wrecker licensed under chapter 46.80 RCW, signed work orders, and bills of sale signed by the seller whose identity and address has been verified describing parts acquired, and the make, model, and vehicle identification number of a vehicle from which the following parts are removed: ~~((1))~~ (a) Engines and short blocks, ~~((2))~~ (b) frames, ~~((3))~~ (c) transmissions and transfer cases, ~~((4))~~ (d) cabs, ~~((5))~~ (e) doors, ~~((6))~~ (f) front or rear differentials, ~~((7))~~ (g) front or rear clips, ~~((8))~~ (h) quarter panels or fenders, ~~((9))~~ (i) bumpers, ~~((10))~~ (j) truck beds or boxes, ~~((11))~~ (k) seats, and ~~((12))~~ (l) hoods.

~~((Such records))~~ (2) The records required under subsection (1) of this section shall be kept for a period of four years and shall be made available for inspection by a law enforcement officer during ordinary business hours.

~~((The acquisition of))~~ (3) It is a gross misdemeanor to: (a) Acquire a part without a substantiating bill of sale or invoice from the parts supplier or ~~((failure))~~ fail to comply with any rules adopted under this section ~~((is a gross misdemeanor. Failure)); (b) fail to obtain the vehicle identification number for those parts requiring that it be obtained~~ ~~((is a gross misdemeanor. Failure)); or (c) fail to keep records for four years or to inake such records available during normal business hours to a law enforcement officer~~ ~~((is a gross misdemeanor)).~~

(3) The chief of the Washington state patrol shall adopt rules for the purpose of regulating record-keeping and parts acquisition by vehicle repairers, restorers, rebuilders, or those who perform substantial vehicle alterations.

(4) The provisions of this section do not apply to major repair, restoration, or alteration of a vehicle thirty years of age or older.

Sec. 243. RCW 46.55.020 and 1989 c 111 s 2 are each amended to read as follows:

(1) A person shall not engage in or offer to engage in the activities of a registered tow truck operator without a current registration certificate from the department of licensing authorizing him or her to engage in such activities.

(2) Any person engaging in or offering to engage in the activities of a registered tow truck operator without the registration certificate required by this chapter is guilty of a gross misdemeanor.

(3) A registered operator who engages in a business practice that is prohibited under this chapter may be issued a notice of traffic infraction under chapter 46.63 RCW and is also subject to the civil penalties that may be imposed by the department under this chapter.

(4) A person found to have committed an offense that is a traffic infraction under this chapter is subject to a monetary penalty of at least two hundred fifty dollars.

(5) All traffic infractions issued under this chapter shall be under the jurisdiction of the district court in whose jurisdiction they were issued.

Sec. 244. RCW 46.61.015 and 2000 c 239 s 4 are each amended to read as follows:

(1) No person shall willfully fail or refuse to comply with any lawful order or direction of any duly authorized flagger or any police officer or fire fighter invested by law with authority to direct, control, or regulate traffic.

(2) A violation of this section is a misdemeanor.

Sec. 245. RCW 46.61.020 and 1995 c 50 s 2 are each amended to read as follows:

(1) It is unlawful for any person while operating or in charge of any vehicle to refuse when requested by a police officer to give his or her name and address and the name and address of the owner of such vehicle, or for such person to give a false name and address, and it is likewise unlawful for any such person to refuse or neglect to stop when signaled to stop by any police officer or to refuse upon demand of such police officer to produce his or her certificate of license registration of such vehicle, his or her insurance identification card, or his or her vehicle driver's license or to refuse to permit such officer to take any such license, card, or certificate for the purpose of examination thereof or to refuse to permit the examination of any equipment of such vehicle or the weighing of such vehicle or to refuse or neglect to produce the certificate of license registration of such vehicle, insurance card, or his or her vehicle driver's license when requested by any court. Any police officer shall on request produce evidence of his or her authorization as such.

(2) A violation of this section is a misdemeanor.

Sec. 246. RCW 46.61.685 and 1990 c 250 s 57 are each amended to read as follows:

(1) It is unlawful for any person, while operating or in charge of a vehicle, to park or willfully allow such vehicle to stand upon a public highway or in a public place with its motor running, leaving a minor child or children under the age of sixteen years unattended in the vehicle.

(2) Any person violating (~~the provisions of~~) this section is guilty of a misdemeanor. Upon a second or subsequent conviction for a violation of this section, the department shall revoke the operator's license of such person.

Sec. 247. RCW 46.64.010 and 1961 c 12 s 46.64.010 are each amended to read as follows:

(1) Every traffic enforcement agency in this state shall provide in appropriate form traffic citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this section. The chief administrative officer of every such traffic enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each citation contained therein issued to individual members of the traffic enforcement agency and shall require and retain a receipt for every book so issued.

(2) Every traffic enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau. Upon the deposit of the original or a copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, (~~said~~) the original or copy of such traffic citation may be disposed of only by trial in

~~((said))~~ the court or other official action by a judge of ~~((said))~~ the court, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine to ~~((said))~~ the traffic violations bureau by the person to whom such traffic citation has been issued by the traffic enforcement officer.

(3) It shall be unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required ~~((herein))~~ in this section.

(4) The chief administrative officer of every traffic enforcement agency shall require the return to him or her of a copy of every traffic citation issued by an officer under his or her supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator. Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his or her supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.

(5) Any person who cancels or solicits the cancellation of any traffic citation, in any manner other than as provided in this section, ~~((shall be))~~ is guilty of a misdemeanor.

(6) Every record of traffic citations required in this section shall be audited monthly by the appropriate fiscal officer of the government agency to which the traffic enforcement agency is responsible.

Sec. 248. RCW 46.68.010 and 1997 c 22 s 1 are each amended to read as follows:

(1) Whenever any license fee, paid under the provisions of this title, has been erroneously paid, either wholly or in part, the payor is entitled to have refunded the amount so erroneously paid.

(2) A license fee is refundable in one or more of the following circumstances: ~~((+))~~ (a) If the vehicle for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; ~~((2))~~ (b) if the vehicle for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; ~~((3))~~ (c) if the vehicle license was purchased after the owner has sold the vehicle; ~~((4))~~ (d) if the vehicle is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable; or ~~((5))~~ (e) if the vehicle for which the renewal license was purchased is sold before the beginning date of the registration period for which the renewal fee was paid, and the payor returns the new, unused, never affixed license renewal tabs to the department before the beginning of the registration period for which the registration was purchased.

(3) Upon the refund being certified to the state treasurer by the director as correct and being claimed in the time required by law the state treasurer shall mail or deliver the amount of each refund to the person entitled thereto. No

claim for refund shall be allowed for such erroneous payments unless filed with the director within three years after such claimed erroneous payment was made.

(4) If due to error a person has been required to pay a vehicle license fee under this title and an excise tax under Title 82 RCW that amounts to an overpayment of ten dollars or more, that person shall be entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested.

(5) If due to error the department or its agent has failed to collect the full amount of the license fee and excise tax due and the underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

(6) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

Sec. 249. RCW 46.70.02I and 1993 c 307 s 4 are each amended to read as follows:

(1) It is unlawful for any person, firm, or association to act as a vehicle dealer or vehicle manufacturer, to engage in business as such, serve in the capacity of such, advertise himself, herself, or themselves as such, solicit sales as such, or distribute or transfer vehicles for resale in this state, without first obtaining and holding a current license as provided in this chapter, unless the title of the vehicle is in the name of the seller.

(2) It is unlawful for any person other than a licensed vehicle dealer to display a vehicle for sale unless the registered owner or legal owner is the displayer or holds a notarized power of attorney.

(3)(a) Except as provided in (b) of this subsection, a person or firm engaged in buying and offering for sale, or buying and selling five or more vehicles in a twelve-month period, or in any other way engaged in dealer activity without holding a vehicle dealer license, is guilty of a gross misdemeanor, and upon conviction ((is)) subject to a fine of up to five thousand dollars for each violation and up to one year in jail.

(b) A second offense is a class C felony punishable under chapter 9A.20 RCW.

(4) A violation of this section is also a per se violation of chapter 19.86 RCW and is considered a deceptive practice.

(5) The department of licensing, the Washington state patrol, the attorney general's office, and the department of revenue shall cooperate in the enforcement of this section.

(6) A distributor, factory branch, or factory representative shall not be required to have a vehicle manufacturer license so long as the vehicle manufacturer so represented is properly licensed pursuant to this chapter.

(7) Nothing in this chapter prohibits financial institutions from cooperating with vehicle dealers licensed under this chapter in dealer sales or leases. However, financial institutions shall not broker vehicles and cooperation is limited to organizing, promoting, and financing of such dealer sales or leases.

Sec. 250. RCW 46.72.100 and 2002 c 86 s 293 are each amended to read as follows:

(1) In addition to the unprofessional conduct specified in RCW 18.235.130, the director may take disciplinary action if he or she has good reason to believe that one of the following is true of the operator or the applicant for a permit or certificate: ~~((1))~~ (a) He or she is guilty of committing two or more offenses for which mandatory revocation of driver's license is provided by law; ~~((2))~~ (b) he or she has been convicted of vehicular homicide or vehicular assault; ~~((3))~~ (c) he or she is intemperate or addicted to the use of narcotics.

(2) Any for hire operator who operates a for hire vehicle without first having filed a bond or insurance policy and having received a for hire permit and a for hire certificate as required by this chapter is guilty of a gross misdemeanor, and upon conviction shall be punished by imprisonment in jail for a period not exceeding ninety days or a fine of not exceeding five hundred dollars, or both fine and imprisonment.

Sec. 251. RCW 46.72A.060 and 1996 c 87 s 9 are each amended to read as follows:

(1) The department shall require limousine carriers to obtain and continue in effect, liability and property damage insurance from a company licensed to sell liability insurance in this state for each limousine used to transport persons for compensation.

(2) The department shall fix the amount of the insurance policy or policies, giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The limousine carrier must maintain the liability and property damage insurance in force on each motor-propelled vehicle while so used.

(3) Failure to file and maintain in effect ~~((this))~~ the insurance required under this section is a gross misdemeanor.

Sec. 252. RCW 46.72A.070 and 1996 c 87 s 10 are each amended to read as follows:

(1) If the limousine carrier substitutes a liability and property damage insurance policy after a vehicle certificate has been issued, a new vehicle certificate is required. The limousine carrier shall submit the substituted policy to the department for approval, together with a fee. If the department approves the substituted policy, the department shall issue a new vehicle certificate.

(2) If a vehicle certificate has been lost, destroyed, or stolen, a duplicate vehicle certificate may be obtained by filing an affidavit of loss and paying a fee.

(3)(a) Except as provided in (b) of this subsection, a limousine carrier who operates a vehicle without first having received a vehicle certificate as required by this chapter is guilty of a misdemeanor ~~((on the first offense and))~~.

(b) A second or subsequent offense is a gross misdemeanor ~~((on a second or subsequent offense))~~.

Sec. 253. RCW 46.80.020 and 1995 c 256 s 5 are each amended to read as follows:

(1) It is unlawful for a person to engage in the business of wrecking vehicles without having first applied for and received a license.

(2)(a) Except as provided in (b) of this subsection, a person or firm engaged in the unlawful activity described in this section is guilty of a gross misdemeanor.

(b) A second or subsequent offense is a class C felony punishable according to chapter 9A.20 RCW.

Sec. 254. RCW 46.80.190 and 1995 c 256 s 20 are each amended to read as follows:

(1) The department of licensing or its authorized agent may examine or subpoena any persons, books, papers, records, data, vehicles, or vehicle parts bearing upon the investigation or proceeding under this chapter.

(2) The persons subpoenaed may be required to testify and produce any books, papers, records, data, vehicles, or vehicle parts that the director deems relevant or material to the inquiry.

(3) The director or an authorized agent may administer an oath to the person required to testify, and a person giving false testimony after the administration of the oath is guilty of perjury in the first degree under RCW 9A.72.020.

(4) A court of competent jurisdiction may, upon application by the director, issue to a person who fails to comply, an order to appear before the director or officer designated by the director, to produce documentary or other evidence touching the matter under investigation or in question.

Sec. 255. RCW 46.87.260 and 1987 c 244 s 39 are each amended to read as follows:

Any person who alters or forges or causes to be altered or forged any cab card, letter of authority, or other temporary authority issued by the department under this chapter or holds or uses a cab card, letter of authority, or other temporary authority, knowing the document to have been altered or forged, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 256. RCW 46.87.290 and 1997 c 183 s 6 are each amended to read as follows:

(1) If the department determines at any time that an applicant for proportional registration of a vehicle or a fleet of vehicles is not entitled to a cab card for a vehicle or fleet of vehicles, the department may refuse to issue the cab card(s) or to license the vehicle or fleet of vehicles and may for like reason, after notice, and in the exercise of discretion, cancel the cab card(s) and license plate(s) already issued. The department shall send the notice of cancellation by first class mail, addressed to the owner of the vehicle in question at the owner's address as it appears in the proportional registration records of the department, and record the transmittal on an affidavit of first class mail. It is then unlawful for any person to remove, drive, or operate the vehicle(s) until a proper certificate(s) of registration or cab card(s) has been issued.

(2) Any person removing, driving, or operating the vehicle(s) after the refusal of the department to issue a cab card(s), certificate(s) of registration, license plate(s), or the revocation or cancellation of the cab card(s), certificate(s) of registration, or license plate(s) is guilty of a gross misdemeanor.

(3) At the discretion of the department, a vehicle that has been moved, driven, or operated in violation of this section may be impounded by the Washington state patrol, county sheriff, or city police in a manner directed for such cases by the chief of the Washington state patrol until proper registration and license plate have been issued.

Sec. 257. RCW 47.36.180 and 1984 c 7 s 201 are each amended to read as follows:

(1) It is unlawful to erect or maintain at or near a city street, county road, or state highway any structure, sign, or device:

((1)) (a) Visible from a city street, county road, or state highway and simulating any directional, warning, or danger sign or light likely to be mistaken for such a sign or bearing any such words as "danger," "stop," "slow," "turn," or similar words, figures, or directions likely to be construed as giving warning to traffic;

((2)) (b) Visible from a city street, county road, or state highway and displaying any red, green, blue, or yellow light or intermittent or blinking light or rotating light identical or similar in size, shape, and color to that used on any emergency vehicle or road equipment or any light otherwise likely to be mistaken for a warning, danger, directional, or traffic control signal or sign;

((3)) (c) Visible from a city street, county road, or state highway and displaying any lights tending to blind persons operating vehicles upon the highway, city street, or county road, or any glaring light, or any light likely to be mistaken for a vehicle upon the highway or otherwise to be so mistaken as to constitute a danger; or

((4)) (d) Visible from a city street, county road, or state highway and flooding or intending to flood or directed across the roadway of the highway with a directed beam or diffused light, whether or not the flood light is shielded against directing its flood beam toward approaching traffic on the highway, city street, or county road.

(2) Any structure or device erected or maintained contrary to the provisions of this section is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the owner thereof that it constitutes a public nuisance and must be removed, and if the owner fails to do so, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town may abate the nuisance.

(3) If the owner fails to remove any ~~(such)~~ structure or device within fifteen days after being notified to remove the structure or device as provided in this section, he or she is guilty of a misdemeanor.

Sec. 258. RCW 47.36.200 and 1984 c 7 s 202 are each amended to read as follows:

(1) When construction, repair, or maintenance work is conducted on or adjacent to a public highway, county road, street, bridge, or other thoroughfare commonly traveled and when the work interferes with the normal and established mode of travel on the highway, county road, street, bridge, or thoroughfare, the location shall be properly posted by prominently displayed signs or flagmen or both. Signs used for posting in such an area shall be consistent with the provisions found in the state of Washington "Manual on Uniform Traffic Control Devices for Streets and Highways" obtainable from the department of transportation.

(2) Any contractor, firm, corporation, political subdivision, or other agency performing such work shall comply with this section.

(3) Each driver of a motor vehicle used in connection with such construction, repair, or maintenance work shall obey traffic signs posted for, and flaggers stationed at such location in the same manner and under the same restrictions as is required for the driver of any other vehicle.

(4) A violation of or a failure to comply with this section is a misdemeanor. Each day upon which there is a violation, or there is a failure to comply, constitutes a separate violation.

Sec. 259. RCW 47.36.250 and 1987 c 330 s 747 are each amended to read as follows:

(1) If the department or its delegate determines at any time for any part of the public highway system that the unsafe conditions of the roadway require particular tires, tire chains, or traction equipment in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of such equipment for all persons using such public highway:

~~((1))~~ (a) Dangerous road conditions, chains or other approved traction devices recommended.

~~((2))~~ (b) Dangerous road conditions, chains or other approved traction devices required.

~~((3))~~ (c) Dangerous road conditions, chains required.

(2) Any equipment that may be required by this section shall be approved by the state patrol as authorized under RCW 46.37.420.

(3) The department shall place and maintain signs and other traffic control devices on the public highways that indicate the tire, tire chain, or traction equipment recommendation or requirement determined under this section. Such signs or traffic control devices shall in no event prohibit the use of studded tires from November 1st to April 1st, but when the department determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to all types of tires including studded tires. The signs or traffic control devices may specify different recommendations or requirements for four wheel drive vehicles in gear.

(4) Failure to obey a requirement indicated by a sign or other traffic control device placed or maintained under this section is a misdemeanor.

Sec. 260. RCW 47.38.010 and 1993 c 116 s 1 are each amended to read as follows:

(1) Pursuant to chapter 34.05 RCW, the department and the Washington state patrol shall jointly adopt rules governing the conduct and the safety of the traveling public relating to the use and control of rest areas and other areas as designated in RCW 47.12.250. Nothing herein may be construed as limiting the powers of the department as provided by law.

(2) Except as otherwise provided in this section, any person violating this section or any rule or regulation adopted pursuant to this section is guilty of a misdemeanor.

(3)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

Sec. 261. RCW 47.41.070 and 1984 c 7 s 220 are each amended to read as follows:

(1) If the owner of the land upon which any such junkyard is located, or the operator thereof, as the case may be, fails to comply with the notice or remove

any such junk within the time provided in this chapter after being so notified, he or she is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling compliance with this chapter. Each day the junkyard is maintained in a manner so as not to comply with this chapter constitutes a separate offense.

(2) If the operator of the junkyard or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the property upon which it is located with a notice that the junkyard constitutes a public nuisance and that the junk thereon must be removed as provided in this chapter. If the notice is not complied with, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and remove the junk, and for that purpose may enter upon private property without incurring liability for doing so.

Sec. 262. RCW 47.52.120 and 1987 c 330 s 748 are each amended to read as follows:

(1) After the opening of any limited access highway facility, it shall be unlawful for any person (~~((1))~~) to: (a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on limited access facilities; (~~((2)-to)~~) (b) make a left turn or semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (~~((3)-to)~~) (c) drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (~~((4)-to)~~) (d) drive any vehicle into the limited access facility from a local service road except through an opening provided for that purpose in the dividing curb, dividing section, or dividing line which separates such service road from the limited access facility proper; (~~((5)-to)~~) (e) stop or park any vehicle or equipment within the right of way of such facility, including the shoulders thereof, except at points specially provided therefor, and to make only such use of such specially provided stopping or parking points as is permitted by the designation thereof: PROVIDED, That this subsection (1)(e) shall not apply to authorized emergency vehicles, law enforcement vehicles, assistance vans, or to vehicles stopped for emergency causes or equipment failures; (~~((6)-to)~~) (f) travel to or from such facility at any point other than a point designated by the establishing authority as an approach to the facility or to use an approach to such facility for any use in excess of that specified by the establishing authority.

(2) For the purposes of this section, an assistance van is a vehicle rendering aid free of charge to vehicles with equipment or fuel problems. The state patrol shall establish by rule additional standards and operating procedures, as needed, for assistance vans.

(3) Any person who violates (~~any of the provisions of~~) this section is guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the city or county jail for not less than five days nor more than ninety days, or by both fine and imprisonment.

(4) Nothing contained in this section prevents the highway authority from proceeding to enforce the prohibitions or limitations of access to such facilities by injunction or as otherwise provided by law.

Sec. 263. RCW 47.68.233 and 2000 c 176 s 1 are each amended to read as follows:

(1) 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.

(2) 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, (b) safety and education, and (c) volunteer recognition and support.

(3) 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.

(4) The provisions of this section do not apply to:

((+)) (a) 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)) (b) A pilot registered under the laws of a foreign country;

((3)) (c) A pilot engaged exclusively in commercial flying constituting an act of interstate or foreign commerce;

((4)) (d) 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.

(5) 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))~~ set forth in RCW 47.68.240(2).

Sec. 264. RCW 47.68.234 and 1993 c 208 s 3 are each amended to read as follows:

(1) The department shall require that every airman or airwoman that is not registered under RCW 47.68.233 and who is a resident of this state, or every nonresident airman or airwoman who is regularly performing duties as an airman or airwoman within this state, be registered with the department. The department shall charge an annual fee not to exceed ten dollars for each registration. A registration certificate issued under this section is to be renewed annually during the month of the registrant's birthdate.

(2) The department shall use the registration fee imposed under this section for the purposes of: ((+)) (a) Search and rescue of lost and downed aircraft and airmen or airwomen under the direction and supervision of the secretary; and ((2)) (b) safety and education.

(3) Registration is ~~((affected—[effected]))~~ 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 with the certificates, shall provide requirements for the possession and exhibition of the certificates.

(4) Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties ~~((incident to this section))~~ set forth in RCW 47.68.240(2).

Sec. 265. RCW 47.68.240 and 2000 c 229 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, ~~((shall be))~~ is guilty of a misdemeanor ~~((and shall be punished as provided under chapter 9A.20 RCW, except that)).~~

(2)(a) Any person violating any of the provisions of RCW 47.68.220, 47.68.230, or 47.68.255 ~~((shall be))~~ is guilty of a gross misdemeanor ~~((which shall be punished as provided under chapter 9A.20 RCW)).~~

(b) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, for violations of RCW 47.68.220 and 47.68.230, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.

Sec. 266. RCW 47.68.255 and 2000 c 229 s 3 are each amended to read as follows:

A person who is required to register an aircraft under this chapter and who registers an aircraft in another state or foreign country evading the Washington aircraft excise tax is guilty of a gross misdemeanor. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed will be deposited in the manner provided under RCW 46.16.010~~((2))~~ (4).

Sec. 267. RCW 48.06.030 and 1947 c 79 s .06.03 are each amended to read as follows:

(1) No person forming or proposing to form in this state an insurer, or insurance holding corporation, or stock corporation to finance an insurer or insurance production therefor, or corporation to manage an insurer, or corporation to be attorney in fact for a reciprocal insurer, or a syndicate for any of such purposes, shall advertise, or solicit or receive any funds, agreement, stock subscription, or membership on account thereof unless he or she has applied for and has received from the commissioner a solicitation permit.

(2) Any person violating this section is guilty of a class B felony and shall be subject to a fine of not more than ten thousand dollars or imprisonment for not more than ten years, or by both fine and imprisonment.

Sec. 268. RCW 48.06.190 and 1947 c 79 s .06.19 are each amended to read as follows:

Every person who, with intent to deceive, knowingly exhibits any false account, or document, or advertisement, relative to the affairs of any insurer, or of any corporation or syndicate of the kind enumerated in RCW 48.06.030, formed or proposed to be formed, ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 269. RCW 48.17.480 and 1988 c 248 s 12 are each amended to read as follows:

(1) An agent or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the agent. Each willful violation of this provision ~~((shall constitute))~~ is a misdemeanor.

(2) All funds representing premiums or return premiums received by an agent, solicitor or broker, shall be so received in his or her fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, or agent as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any agent, solicitor, broker, adjuster or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, ~~((shall be))~~ is guilty of ~~((larceny by embezzlement, and shall be punished as provided in the criminal statutes of this state))~~ theft under chapter 9A.56 RCW.

Sec. 270. RCW 48.30.230 and 1990 1st ex.s. c 3 s 11 are each amended to read as follows:

~~((1))~~ (1) It is unlawful for any person, ~~((who;))~~ knowing it to be such, to:
~~((1))~~ (a) Present((s)), or cause((s)) to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss under a contract of insurance; or

~~((2))~~ (b) Prepare((s)), make((s)), or subscribe((s)) any false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that it be presented or used in support of such a claim((;)).

(2)(a) Except as provided in (b) of this subsection, a violation of this section is ~~((guilty of))~~ a gross misdemeanor~~((; or))~~.

(b) If ~~((such))~~ the claim is in excess of one thousand five hundred dollars, ~~((of))~~ the violation is a class C felony punishable according to chapter 9A.20 RCW.

Sec. 271. RCW 48.30A.015 and 1995 c 285 s 3 are each amended to read as follows:

(1) It is unlawful for a person:

(a) Knowing that the payment is for the referral of a claimant to a service provider, either to accept payment from a service provider or, being a service provider, to pay another; or

(b) To provide or claim or represent to have provided services to a claimant, knowing the claimant was referred in violation of (a) of this subsection.

(2) It is unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or offering to waive, rebate, give, or pay all or any part of a claimant's casualty or property insurance deductible.

(3) A violation of this section constitutes trafficking in insurance claims.

(4)(a) Trafficking in insurance claims is a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony.

Sec. 272. RCW 48.31.105 and 1993 c 462 s 58 are each amended to read as follows:

(1) An officer, manager, director, trustee, owner, employee, or agent of an insurer or other person with authority over or in charge of a segment of the insurer's affairs shall cooperate with the commissioner in a proceeding under this chapter or an investigation preliminary to the proceeding. The term "person" as used in this section includes a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate of the insurer. "To cooperate" as used in this section includes the following:

(a) To reply promptly in writing to an inquiry from the commissioner requesting such a reply; and

(b) To make available to the commissioner books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his or her possession, custody, or control.

(2) A person may not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto.

(3) This section does not abridge existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) A person included within subsection (1) of this section who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto, or who violates an order the commissioner issued validly under this chapter may:

(a) Be guilty of a gross misdemeanor and sentenced to pay a fine not exceeding ten thousand dollars or to undergo imprisonment for a term of not more than one year, or both; or

(b) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and be subject further to the revocation or suspension of insurance licenses issued by the commissioner.

Sec. 273. RCW 49.12.410 and 1991 c 303 s 5 are each amended to read as follows:

(1) An employer who knowingly or recklessly violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross misdemeanor.

(2) An employer whose practices in violation of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, result in the death or permanent disability of a minor employee is guilty of a class C felony punishable according to chapter 9A.20 RCW.

Sec. 274. RCW 49.28.010 and 1899 c 101 s 1 are each amended to read as follows:

(1) Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided.

(2) All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys, or buildings for the state or any county or municipality within the state, shall be done under the provisions of this section. In cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose this section is made a part of all contracts, subcontracts, or agreements for work done for the state or any county or municipality within the state.

(3) Any contractor, subcontractor, or agent of contractor or subcontractor, foreman, or employer who violates this section is guilty of a misdemeanor and shall be fined a sum not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court.

Sec. 275. RCW 49.28.080 and 1937 c 129 s 1 are each amended to read as follows:

(1) No male or female household or domestic employee shall be employed by any person for a longer period than sixty hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations.

(2) In cases of emergency such employee may be employed for a longer period than sixty hours.

(3) Any employer violating this section is guilty of a misdemeanor.

Sec. 276. RCW 49.28.100 and 1953 c 271 s 1 are each amended to read as follows:

(1) It shall be unlawful for any employer to permit any of his or her employees to operate on docks, in warehouses and/or in or on other waterfront properties any power driven mechanical equipment for the purpose of loading cargo on, or unloading cargo from, ships, barges, or other watercraft, or of assisting in such loading or unloading operations, for a period in excess of twelve and one-half hours at any one time without giving such person an interval of eight hours' rest: PROVIDED, HOWEVER, The provisions of this section ~~((and RCW 49.28.110))~~ shall not be applicable in cases of emergency, including fire, violent storms, leaking or sinking ships or services required by the armed forces of the United States.

(2) Any person violating this section is guilty of a misdemeanor.

Sec. 277. RCW 49.44.100 and 1961 c 180 s 1 are each amended to read as follows:

(1) It shall be unlawful for any person, firm or corporation not directly involved in a labor strike or lockout to recruit and bring into this state from

outside this state any person or persons for employment, or to secure or offer to secure for such person or persons any employment, when the purpose of such recruiting, securing or offering to secure employment((;)) is to have such persons take the place in employment of employees in a business owned by a person, firm or corporation involved in a labor strike or lockout, or to have such persons act as pickets of a business owned by a person, firm or corporation where a labor strike or lockout exists: PROVIDED, That this section ((and RCW 49.44.110)) shall not apply to activities and services offered by or through the Washington employment security department.

(2) Any person violating this section is guilty of a gross misdemeanor.

Sec. 278. RCW 49.44.120 and 1985 c 426 s 1 are each amended to read as follows:

(1) It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: PROVIDED, That this section shall not apply to persons making initial application for employment with any law enforcement agency: PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

(2) Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

(3) Any person violating this section is guilty of a misdemeanor.

(4) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(5) Nothing in this section may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under this section for purposes of any civil action or injunctive relief.

Sec. 279. RCW 50.36.010 and 1953 ex.s. c 8 s 22 are each amended to read as follows:

(1) It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title.

(2) Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, ((shall be)) is guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days((; PROVIDED, That any person who violates the provisions of RCW 50.40.010 shall be guilty of a gross misdemeanor)).

(3) Any person who in connection with any compromise or offer of compromise willfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book,

document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, is guilty of a gross misdemeanor and shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.

(4) The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section.

Sec. 280. RCW 50.36.020 and 1953 ex.s. c 8 s 23 are each amended to read as follows:

(1) Any person required under this title to collect, account for and pay over any contributions imposed by this title, who willfully fails to collect or truthfully account for and pay over such contributions, and any person who willfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, is guilty of a gross misdemeanor and shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(2) The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person.

Sec. 281. RCW 50.40.010 and 1945 c 35 s 182 are each amended to read as follows:

(1) Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under this title shall be void.

(2) Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this title from such employer, shall be void.

(3) No employer shall directly or indirectly make or require or accept any deduction from remuneration for services to finance the employer's contributions required from him or her, or require or accept any waiver of any right hereunder by any individual in his or her employ.

(4) A person violating this section is guilty of a gross misdemeanor.

Sec. 282. RCW 51.48.040 and 1986 c 9 s 9 are each amended to read as follows:

(1) The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary for the department and its management under this title.

(2) Refusal on the part of the employer to submit his or her books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars

for each offense and the individual who personally gives such refusal (~~shall be~~) is guilty of a misdemeanor.

(3) Any employer who fails to allow adequate inspection in accordance with the requirements of this section is subject to having its certificate of coverage revoked by order of the department and is forever barred from questioning in any proceeding in front of the board of industrial insurance appeals or any court, the correctness of any assessment by the department based on any period for which such records have not been produced for inspection.

Sec. 283. RCW 51.48.103 and 1986 c 9 s 12 are each amended to read as follows:

(1) It is (~~unlawful~~) a gross misdemeanor:

(a) For any employer to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title;

(b) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title.

~~((Any person violating any of the provisions of this subsection is guilty of a gross misdemeanor punishable under RCW 9A.20.021.))~~

(2) It is (~~unlawful~~) a class C felony punishable according to chapter 9A.20 RCW:

(a) For any employer to engage in business subject to this title after the employer's certificate of coverage has been revoked by order of the department;

(b) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title after revocation of a certificate of coverage.

~~((Any person violating any of the provisions of this subsection is guilty of a class C felony punishable under RCW 9A.20.021.))~~

Sec. 284. RCW 51.48.280 and 1997 c 336 s 1 are each amended to read as follows:

(1) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity(~~(, that))~~ to solicit((s)) or receive((s)) any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(a) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter; or

(b) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter(~~(; shall be guilty of a class C felony. However, the fine, if imposed, shall not be in an amount more than twenty five thousand dollars, except as authorized by RCW 9A.20.030)).~~)

(2) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity(~~(, that))~~ to offer((s)) or pay((s)) any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(a) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter; or

(b) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter(~~(; shall be guilty of a class C felony. However, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030).~~);

(3) A health services provider who (a) provides a health care service to a claimant, while acting as the claimant's representative for the purpose of obtaining authorization for the services, and (b) charges a percentage of the claimant's benefits or other fee for acting as the claimant's representative under this title (~~(shall be)~~) is guilty of a gross misdemeanor. (~~(However, the fine, if imposed,)~~)

(4) Any fine imposed as a result of a violation of subsection (1), (2), or (3) of this section shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

~~((4))~~ (5) Subsections (1) and (2) of this section shall not apply to:

(a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter; and

(b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

~~((5))~~ (6) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW.

Sec. 285. RCW 51.52.120 and 1990 c 15 s 1 are each amended to read as follows:

(1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the

department, and the board may review the fee fixed by ~~((said))~~ the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(3) Any person who violates ~~((any provision of))~~ this section ~~((shall be))~~ is guilty of a misdemeanor.

Sec. 286. RCW 53.08.220 and 1979 ex.s. c 136 s 103 are each amended to read as follows:

(1) A port district may formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors, and members of the general public of any properties or facilities owned or operated by it, and request the adoption, amendment, or repeal of such regulations as part of the ordinances of the city or town in which such properties or facilities are situated, or as part of the resolutions of the county, if such properties or facilities be situated outside any city or town. The port commission shall make such request by resolution after holding a public hearing on the proposed regulations, of which at least ten days' notice shall be published in a legal newspaper of general circulation in the port district. Such regulations must conform to and be consistent with federal and state law. As to properties or facilities situated within a city or town, such regulations must conform to and be consistent with the ordinances of the city or town. As to properties or facilities situated outside any city or town, such regulations must conform to and be consistent with county resolutions. Upon receiving such request, the governing body of the city, town, or county, as the case may be, may adopt such regulations as part of its ordinances or resolutions, or amend or repeal such regulations in accordance with the terms of the request.

(2)(a) Except as otherwise provided in this subsection, any violation of ~~((such))~~ the regulations ~~((shall constitute))~~ described in subsection (1) of this section is a misdemeanor which shall be redressed in the same manner as other police regulations of the city, town, or county, and it shall be the duty of all law enforcement officers to enforce such regulations accordingly~~((:—PROVIDED, That))~~.

(b) Except as provided in (c) of this subsection, violation of such a regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction~~((; except that))~~.

(c) Violation of such a regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

Sec. 287. RCW 53.34.190 and 1959 c 236 s 19 are each amended to read as follows:

(1) Any port district establishing a project under the authority of this chapter may make such bylaws, rules, and regulations for the management and use of such project and for the collection of rentals, tolls, fees, and other charges for services or commodities sold, furnished or supplied through such project~~((; and))~~.

(2) The violation of any ((such)) bylaw, rule, or regulation ((shall be an offense)) described in subsection (1) of this section is a misdemeanor punishable by fine not to exceed one hundred dollars or by imprisonment for not longer than thirty days, or both.

Sec. 288. RCW 61.12.030 and 1989 c 343 s 21 are each amended to read as follows:

(1) When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from ~~((said))~~ the real estate any fixtures, buildings, or permanent improvements including a manufactured home whose title has been eliminated under chapter 65.20 RCW, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his, her, or their written consent for such removal or destruction.

(2) Any person willfully violating this section is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Sec. 289. RCW 64.36.020 and 1983 1st ex.s. c 22 s 2 are each amended to read as follows:

(1) A timeshare offering registration must be effective before any advertisement, solicitation of an offer, or any offer or sale of a timeshare may be made in this state.

(2) An applicant shall apply for registration by filing with the director:

(a) A copy of the disclosure document prepared in accordance with RCW 64.36.140 and signed by the applicant;

(b) An application for registration prepared in accordance with RCW 64.36.030;

(c) An irrevocable consent to service of process signed by the applicant;

(d) The prescribed registration fee; and

(e) Any other information the director may by rule require in the protection of the public interest.

(3) The registration requirements do not apply to:

(a) An offer, sale, or transfer of not more than one timeshare in any twelve-month period;

(b) A gratuitous transfer of a timeshare;

(c) A sale under court order;

(d) A sale by a government or governmental agency;

(e) A sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(f) A sale of a timeshare property or all timeshare units therein to any one purchaser.

(4) The director may by rule or order exempt any potential registrant from the requirements of this chapter if the director finds registration is unnecessary for the protection of the public interest.

(5)(a) Except as provided in (b) of this subsection, any person who violates this section is guilty of a gross misdemeanor.

(b) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(c) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

Sec. 290. RCW 64.36.210 and 1983 1st ex.s. c 22 s 20 are each amended to read as follows:

(1) It is unlawful for any person in connection with the offer, sale, or lease of any timeshare in the state:

~~((1))~~ (a) To make any untrue or misleading statement of a material fact, or to omit a material fact;

~~((2))~~ (b) To employ any device, scheme, or artifice to defraud;

~~((3))~~ (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

~~((4))~~ (d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information; or

~~((5))~~ (e) To violate any rule or order of the director.

(2)(a) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(b) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

Sec. 291. RCW 65.12.730 and 1907 c 250 s 89 are each amended to read as follows:

Certificates of title or duplicate certificates entered under this chapter, shall be subjects of ~~((larceny))~~ theft, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of ~~((grand larceny, and punished accordingly))~~ theft under chapter 9A.56 RCW.

Sec. 292. RCW 65.12.740 and 1907 c 250 s 90 are each amended to read as follows:

Whoever knowingly swears falsely to any statement required by this chapter to be made under oath ~~((shall be))~~ is guilty of perjury ~~((, and shall be liable to the statutory penalties therefor))~~ under chapter 9A.72 RCW.

Sec. 293. RCW 65.12.750 and 1907 c 250 s 91 are each amended to read as follows:

Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a class C felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in ~~((the penitentiary not exceeding))~~ a state correctional facility for not more than five years, or both such fine and imprisonment, in the discretion of the court.

Sec. 294. RCW 65.12.760 and 1907 c 250 s 92 are each amended to read as follows:

Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, or handwriting of any officer of the registry

office, in case where such officer is expressly or impliedly authorized to affix his or her signature; or forges or procures to be forged, or assists in forging, the name, signature, or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of ~~((said))~~ the registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a class B felony, and upon conviction shall be imprisoned in ~~((the penitentiary not exceeding))~~ a state correctional facility for not more than ten years, or fined not ~~((exceeding))~~ more than one thousand dollars, or both fined and imprisoned, in the discretion of the court.

Sec. 295. RCW 66.20.200 and 2002 c 175 s 41 are each amended to read as follows:

(1) It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his or her card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee or gain admission to a premises or portion of a premises classified by the board as off-limits to persons under twenty-one years of age, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution.

(2) Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification, and any person who possesses a card of identification not issued to him or her, and any person who makes any false statement on any certification card required by RCW 66.20.190, ~~((as now or hereafter amended,))~~ to be signed by him or her, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution.

Sec. 296. RCW 66.28.200 and 1998 c 126 s 13 are each amended to read as follows:

(1) Licensees holding a beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240.

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

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

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

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

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

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

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

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

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

(3) A violation of this section is a gross misdemeanor.

Sec. 297. RCW 66.28.210 and 1989 c 271 s 230 are each amended to read as follows:

(1) Any person who purchases the contents of kegs or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

~~((1))~~ (a) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

~~((2))~~ (b) Provide one piece of identification pursuant to RCW 66.16.040;

~~((3))~~ (c) Be of legal age to purchase, possess, or use malt liquor;

~~((4))~~ (d) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;

~~((5))~~ (e) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;

~~((6))~~ (f) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any place other than that particular address declared on the receipt and declaration; and

~~((7))~~ (g) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(2) A violation of this section is a gross misdemeanor.

Sec. 298. RCW 66.28.220 and 1999 c 281 s 7 are each amended to read as follows:

(1) The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the

purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a statewide basis or on the basis of smaller geographical areas.

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

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

(4) A violation of this section is a gross misdemeanor.

Sec. 299. RCW 66.44.120 and 1992 c 7 s 42 are each amended to read as follows:

(1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a vendor or store employee; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates ((any provision of)) this section ((shall be)) is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine((;)), and for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine((; for)).

(b) A third ((offense)) or subsequent offense((s-to)) is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years.

Sec. 300. RCW 66.44.180 and 1987 c 202 s 225 are each amended to read as follows:

(1) Every person guilty of a violation of this title for which no penalty has been specifically provided ((shall be liable, on conviction, for a first offense to a penalty));

(a) For a first offense, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or ((to)) by imprisonment for not more than two months, or both;

(b) For a second offense ((to)), is guilty of a gross misdemeanor punishable by imprisonment for not more than six months; and

(c) For a third or subsequent offense ((to)), is guilty of a gross misdemeanor punishable by imprisonment for not more than one year.

(2) If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five

thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

(3) Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor.

Sec. 301. RCW 66.44.290 and 2001 c 295 s 1 are each amended to read as follows:

(1) Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. This section does not apply to persons between the ages of eighteen and twenty-one years who are participating in a controlled purchase program authorized by the liquor control board under rules adopted by the board. Violations occurring under a private, controlled purchase program authorized by the liquor control board may not be used for criminal or administrative prosecution.

(2) An employer who conducts an in-house controlled purchase program authorized under this section shall provide his or her employees a written description of the employer's in-house controlled purchase program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase.

(3) An in-house controlled purchase program authorized under this section shall be for the purposes of employee training and employer self-compliance checks. An employer may not terminate an employee solely for a first-time failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase program authorized under this section.

(4) Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of this section is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution.

Sec. 302. RCW 67.24.010 and 1992 c 7 s 43 are each amended to read as follows:

Every person who shall give, offer, receive, or promise, directly or indirectly, any compensation, gratuity, or reward, or make any promise thereof, or who shall fraudulently commit any act by trick, device, or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between people or between animals, ~~((shall be))~~ is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years.

Sec. 303. RCW 67.70.120 and 1987 c 511 s 6 are each amended to read as follows:

(1) A ticket or share shall not be sold to any person under the age of eighteen, but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person eighteen years of age or older to a person less than that age.

(2) Any licensee who knowingly sells or offers to sell a lottery ticket or share to any person under the age of eighteen is guilty of a misdemeanor.

(3) In the event that a person under the age of eighteen years directly purchases a ticket in violation of this section, that person is guilty of a misdemeanor. No prize will be paid to such person and the prize money otherwise payable on the ticket will be treated as unclaimed pursuant to RCW 67.70.190.

Sec. 304. RCW 67.70.130 and 1982 2nd ex.s. c 7 s 13 are each amended to read as follows:

(1) A person shall not alter or forge a lottery ticket. A person shall not claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation. A person shall not conspire, aid, abet, or agree to aid another person or persons to claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW.

Sec. 305. RCW 67.70.140 and 1982 2nd ex.s. c 7 s 14 are each amended to read as follows:

(1) Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section.

Sec. 306. RCW 68.28.060 and 1943 c 247 s 140 are each amended to read as follows:

Every owner or operator of a mausoleum or columbarium erected in violation of this act is guilty of maintaining a public nuisance, a gross misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case.

Sec. 307. RCW 68.50.100 and 1963 c 178 s 2 are each amended to read as follows:

(1) The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he or she may authorize dissection; and cases where the spouse or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: PROVIDED, That the coroner, in his or her discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or postmortem in any case in which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he or she has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death.

(2) Every person who shall make, cause, or procure to be made any dissection of a body, except as ((above)) provided in this section, ((shall be)) is guilty of a gross misdemeanor.

Sec. 308. RCW 68.50.140 and 1992 c 7 s 44 are each amended to read as follows:

(1) Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.

(2) Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both.

(3) Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove ((said)) the body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both.

Sec. 309. RCW 68.50.145 and 1992 c 7 s 45 are each amended to read as follows:

Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Sec. 310. RCW 68.50.150 and 1992 c 7 s 46 are each amended to read as follows:

Every person who mutilates, disinters, or removes from the place of interment any human remains without authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both.

Sec. 311. RCW 68.50.250 and 1943 c 247 s 57 are each amended to read as follows:

(1) No crematory shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape, and outside

covering of the casket consumed with such body, ~~((said))~~ the record to be open to inspection of any person lawfully entitled thereto.

(2) A person violating this section is guilty of a misdemeanor, and each violation shall constitute a separate offense.

Sec. 312. RCW 68.50.610 and 1993 c 228 s 10 are each amended to read as follows:

(1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a class C felony and upon conviction is subject to a fine not exceeding fifty thousand dollars or imprisonment not exceeding five years, or both.

Sec. 313. RCW 68.56.040 and 1943 c 247 s 145 are each amended to read as follows:

Every person, firm, or corporation who is the owner or operator of a cemetery established in violation of this act is guilty of maintaining a public nuisance, a gross misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case.

Sec. 314. RCW 69.04.060 and 1945 c 257 s 24 are each amended to read as follows:

Any person who violates any provision of RCW 69.04.040 ~~((shall be))~~ is guilty of a misdemeanor and shall on conviction thereof be subject to the following penalties:

(1) A fine of not more than two hundred dollars; ~~((but))~~ or

(2) If the violation is committed after a conviction of such person under this section has become final, ~~((such person shall be subject to))~~ imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine.

Sec. 315. RCW 69.04.070 and 1945 c 257 s 25 are each amended to read as follows:

Notwithstanding the provisions of RCW 69.04.060, ~~((in case of a violation of any provision of))~~ a person who violates RCW 69.04.040~~((;))~~ with intent to defraud or mislead~~((;))~~ is guilty of a misdemeanor and the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine.

Sec. 316. RCW 69.07.150 and 1991 c 137 s 9 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule or regulation adopted hereunder ~~((shall be))~~ is guilty of a misdemeanor ~~((and guilty of a gross misdemeanor for any)).~~

(b) A second ~~((and))~~ or subsequent violation~~((;—PROVIDED, That))~~ is a gross misdemeanor. Any offense committed more than five years after a

previous conviction shall be considered a first offense. ~~((A misdemeanor under this section is punishable to the same extent that a misdemeanor is punishable under RCW 9A.20.021 and a gross misdemeanor under this section is punishable to the same extent that a gross misdemeanor is punishable under RCW 9A.20.021.))~~

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

Sec. 317. RCW 69.25.150 and 1995 c 374 s 27 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a misdemeanor ((and guilty of a gross misdemeanor for any)).

(b) A second ((and)) or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. ~~((A misdemeanor under this section is punishable to the same extent that a misdemeanor is punishable under RCW 9A.20.021 and a gross misdemeanor under this section is punishable to the same extent that a gross misdemeanor is punishable under RCW 9A.20.021.~~

~~((b))~~ (2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to ~~((a) of this))~~ subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

(3) When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

~~((2))~~ (4) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or ~~((subsection (3) of this section))~~ section 318 of this act, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

~~((3) Notwithstanding any other provision of law any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his or her official duties under~~

~~this chapter shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both.))~~

NEW SECTION. Sec. 318. A new section is added to chapter 69.25 RCW to read as follows:

(1) Notwithstanding any other provision of law, any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his or her official duties under this chapter is guilty of a class C felony and shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both.

(2) Whoever, in the commission of any act described in subsection (1) of this section, uses a deadly or dangerous weapon is guilty of a class B felony and shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both.

Sec. 319. RCW 69.25.160 and 1975 1st ex.s. c 201 s 17 are each amended to read as follows:

Before any violation of this chapter, other than ~~((RCW 69.25.150(3)))~~ section 318 of this act, is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his or her views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he or she believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning.

Sec. 320. RCW 69.40.020 and 1905 c 50 s 1 are each amended to read as follows:

Any person who shall sell, offer to sell, or have in his or her possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, ~~((shall be))~~ is guilty of a class C felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years.

Sec. 321. RCW 69.40.030 and 1992 c 7 s 48 are each amended to read as follows:

(1) Every person who willfully mingles poison or ~~((place[s]))~~ places any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink, medicine, or other edible substance containing such poison or harmful object or

substance to another human being, and every person who willfully poisons any spring, well, or reservoir of water, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years or by a fine of not less than one thousand dollars~~((:—PROVIDED, HOWEVER, That))~~.

(2) This act shall not apply to the employer or employers of a person who violates ~~((the provisions contained herein))~~ this section without such employer's knowledge.

Sec. 322. RCW 69.41.020 and 1989 1st ex.s. c 9 s 408 and 1989 c 352 s 8 are each reenacted and amended to read as follows:

Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

- (a) By fraud, deceit, misrepresentation, or subterfuge; or
- (b) By the forgery or alteration of a prescription or of any written order; or
- (c) By the concealment of a material fact; or
- (d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself or herself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs.

(7) No person shall willfully fail to maintain the records required by RCW 69.41.042 and 69.41.270.

(8) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW.

Sec. 323. RCW 69.41.030 and 1996 c 178 s 17 are each amended to read as follows:

(1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, 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 commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under

chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor.

Sec. 324. RCW 69.41.040 and 1973 1st ex.s. c 186 s 4 are each amended to read as follows:

(1) A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who knows or should know that he or she is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW.

Sec. 325. RCW 69.41.050 and 1980 c 83 s 8 are each amended to read as follows:

(1) To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug either by the brand or generic name and strength per unit dose, name of patient and date: PROVIDED, That the practitioner may omit the name and dosage of the drug if he or she determines that his or her patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient.

(2) A violation of this section is a misdemeanor.

Sec. 326. RCW 69.41.070 and 1989 c 369 s 4 are each amended to read as follows:

~~((Whoever violates any provision of this chapter shall, upon conviction, be fined and imprisoned as herein provided:~~

~~(1) For a violation of RCW 69.41.020, the offender shall be guilty of a felony.~~

~~(2) For a violation of RCW 69.41.030 involving the sale, delivery, or possession with intent to sell or deliver, the offender shall be guilty of a felony.~~

~~(3) For a violation of RCW 69.41.030 involving possession, the offender shall be guilty of a misdemeanor.~~

~~(4) For a violation of RCW 69.41.040, the offender shall be guilty of a felony.~~

~~(5) For a violation of RCW 69.41.050, the offender shall be guilty of a misdemeanor.~~

~~(6) Any offense which is a violation of chapter 69.50 RCW other than RCW 69.50.401(e) shall not be charged under this chapter.~~

~~(7) For a violation of RCW 69.41.320(1), the offender shall be guilty of a gross misdemeanor and subject to disciplinary action under RCW 18.130.180.~~

~~(8)(a)) (1) A person who violates the provisions of this chapter by possessing under two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a gross misdemeanor.~~

~~((b)) (2) A person who violates the provisions of this chapter by possessing over two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a class C felony and shall be punished according to ((RCW 9A.20.010(1)(e))) chapter 9A.20 RCW.~~

NEW SECTION. Sec. 327. A new section is added to chapter 69.41 RCW to read as follows:

Any offense which is a violation of chapter 69.50 RCW other than section 333 of this act shall not be charged under this chapter.

Sec. 328. RCW 69.41.300 and 1989 c 369 s 1 are each amended to read as follows:

For the purposes of RCW 69.41.070 (as recodified by this act) and 69.41.300 through 69.41.340, "steroids" shall include the following:

(1) "Anabolic steroids" means synthetic derivatives of testosterone or any isomer, ester, salt, or derivative that act in the same manner on the human body;

(2) "Androgens" means testosterone in one of its forms or a derivative, isomer, ester, or salt, that act in the same manner on the human body; and

(3) "Human growth hormones" means growth hormones, or a derivative, isomer, ester, or salt that act in the same manner on the human body.

Sec. 329. RCW 69.41.320 and 1989 c 369 s 3 are each amended to read as follows:

(1)(a) A practitioner shall not prescribe, administer, or dispense steroids, as defined in RCW 69.41.300, or any form of autotransfusion for the purpose of manipulating hormones to increase muscle mass, strength, or weight, or for the purpose of enhancing athletic ability, without a medical necessity to do so.

(b) A person violating this subsection is guilty of a gross misdemeanor and is subject to disciplinary action under RCW 18.130.180.

(2) A practitioner shall complete and maintain patient medical records which accurately reflect the prescribing, administering, or dispensing of any substance or drug described in this section or any form of autotransfusion. Patient medical records shall indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is prescribed, administered, or dispensed and any additional information upon which the diagnosis is based.

Sec. 330. RCW 69.41.330 and 1989 c 369 s 5 are each amended to read as follows:

The superintendent of public instruction shall develop and distribute to all school districts signs of appropriate design and dimensions advising students of the health risks that steroids present when used solely to enhance athletic ability, and of the penalties for their unlawful possession provided by RCW 69.41.070 (as recodified by this act) and 69.41.300 through 69.41.340.

School districts shall post or cause the signs to be posted in a prominent place for ease of viewing on the premises of school athletic departments.

Sec. 331. RCW 69.50.401 and 1998 c 290 s 1 and 1998 c 82 s 2 are each reenacted and amended to read as follows:

~~((A))~~ (1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

~~((B))~~ (2) Any person who violates this ~~((subsection))~~ section with respect to:

~~((i))~~ (a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam classified in Schedule IV, is guilty of a ~~((crime))~~ class B felony and upon conviction may be imprisoned for not more than ten years, or ~~((A))~~ (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or ~~((B))~~ (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

~~((ii))~~ (b) Amphetamine or methamphetamine, is guilty of a ~~((crime))~~ class B felony and upon conviction may be imprisoned for not more than ten years, or ~~((A))~~ (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or ~~((B))~~ (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

~~((iii))~~ (c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a ~~((crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both))~~ class C felony punishable according to chapter 9A.20 RCW;

~~((iv))~~ (d) A substance classified in Schedule IV, except flunitrazepam, is guilty of a ~~((crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both))~~ class C felony punishable according to chapter 9A.20 RCW; or

~~((v))~~ (e) A substance classified in Schedule V, is guilty of a ~~((crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both))~~ class C felony punishable according to chapter 9A.20 RCW.

~~((b))~~ Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty five thousand dollars, or both;

(ii) a counterfeit substance which is methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty five thousand dollars, or both;

(iii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(e) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(1)(iii) of this section any person found guilty of possession of forty grams or less of marijuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this

~~subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.~~

~~This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410.)~~

NEW SECTION. Sec. 332. A new section is added to chapter 69.50 RCW to read as follows:

(1) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(2) Any person who violates this section with respect to:

(a) A counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(b) A counterfeit substance which is methamphetamine, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(c) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(e) A counterfeit substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

NEW SECTION. Sec. 333. A new section is added to chapter 69.50 RCW to read as follows:

(1) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance.

(2) Any person who violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

NEW SECTION. Sec. 334. A new section is added to chapter 69.50 RCW to read as follows:

(1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in section 335 of this act, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

NEW SECTION. Sec. 335. A new section is added to chapter 69.50 RCW to read as follows:

Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of forty grams or less of marihuana is guilty of a misdemeanor.

NEW SECTION. Sec. 336. A new section is added to chapter 69.50 RCW to read as follows:

(1) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance.

(2) A violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

NEW SECTION. Sec. 337. A new section is added to chapter 69.50 RCW to read as follows:

RCW 69.50.401 and sections 332 through 336 of this act shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410.

Sec. 338. RCW 69.50.402 and 1994 sp.s. c 9 s 740 are each amended to read as follows:

~~((a))~~ **(1)** It is unlawful for any person:

~~((+))~~ **(a)** Who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

~~((2))~~ **(b)** Who is a registrant, to manufacture a controlled substance not authorized by his or her registration, or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized person;

~~((3))~~ **(c)** Who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) Any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the board of pharmacy pursuant to chapter 34.05 RCW; or

(ii) Any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the board of pharmacy pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesia, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the state board of pharmacy before the investigation has been begun: PROVIDED, That the board of pharmacy, in consultation with the medical quality assurance commission and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: AND PROVIDED, FURTHER, That investigations by the board of pharmacy of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection ~~((a)(3))~~ **(1)(c)** of this section shall be done in consultation with the medical quality assurance commission;

~~((4))~~ **(d)** To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

~~((5))~~ **(e)** To refuse an entry into any premises for any inspection authorized by this chapter; or

~~((6))~~ (f) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

~~((b))~~ (2) Any person who violates this section is guilty of a ~~((crime))~~ class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both.

Sec. 339. RCW 69.50.403 and 1996 c 255 s 1 are each amended to read as follows:

~~((a))~~ (1) It is unlawful for any person knowingly or intentionally:

~~((+))~~ (a) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by RCW 69.50.307;

~~((2))~~ (b) To use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

~~((3))~~ (c) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address(-);

~~((4))~~ (d) To falsely assume the title of, or represent herself or himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance(-);

~~((5))~~ (e) To make or utter any false or forged prescription or false or forged written order(-);

~~((6))~~ (f) To affix any false or forged label to a package or receptacle containing controlled substances(-);

~~((7))~~ (g) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; ~~((or~~

~~((8))~~ (h) To possess a false or fraudulent prescription with intent to obtain a controlled substance(-); or

~~((9))~~ (i) To attempt to illegally obtain controlled substances by providing more than one name to a practitioner when obtaining a prescription for a controlled substance. If a person's name is legally changed during the time period that he or she is receiving health care from a practitioner, the person shall inform all providers of care so that the medical and pharmacy records for the person may be filed under a single name identifier.

~~((b))~~ (2) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

~~((e))~~ (3) A person who violates this section is guilty of a ~~((crime))~~ class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both.

Sec. 340. RCW 69.50.406 and 1998 c 290 s 2 are each amended to read as follows:

~~((a))~~ (1) Any person eighteen years of age or over who violates RCW 69.50.401~~((a))~~ by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, or flunitrazepam listed in Schedule IV, to a person under eighteen years of age is guilty of a class A felony punishable by the fine authorized by RCW 69.50.401~~((a)(1)(i) or (ii))~~ (2) (a) or (b), by a term of imprisonment of up to twice that authorized by RCW 69.50.401~~((a)(1)(i) or (ii))~~ (2) (a) or (b), or by both.

~~((b))~~ (2) Any person eighteen years of age or over who violates RCW 69.50.401~~((a))~~ by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his or her junior is guilty of a class B felony punishable by the fine authorized by RCW 69.50.401~~((a)(1)(iii), (iv), or (v))~~ (2) (c), (d), or (e), by a term of imprisonment up to twice that authorized by RCW 69.50.401~~((a)(1)(iii), (iv), or (v))~~ (2) (c), (d), or (e), or both.

Sec. 341. RCW 69.50.408 and 1989 c 8 s 3 are each amended to read as follows:

~~((a))~~ (1) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

~~((b))~~ (2) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

~~((e))~~ (3) This section does not apply to offenses under ~~((RCW 69.50.401(d))~~ section 334 of this act.

Sec. 342. RCW 69.50.410 and 1999 c 324 s 6 are each amended to read as follows:

(1) Except as authorized by this chapter it ~~((shall be unlawful))~~ is a class C felony for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2)(a) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense.

(b) Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional

facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3)(a) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation.

(b) Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: PROVIDED, That the indeterminate sentence review board under RCW 9.95.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) Whether or not a mandatory minimum term has expired, an offender serving a sentence under this section may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4).

(5) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(6) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his or her voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

(7) This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 or sections 332 through 336 of this act.

Sec. 343. RCW 69.50.415 and 1996 c 205 s 8 are each amended to read as follows:

((a)) (1) A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401((a)(1) (i), (ii), or (iii)) (2) (a), (b), or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

((b)) (2) Controlled substances homicide is a class B felony punishable according to chapter 9A.20 RCW ((9A.20.021)).

Sec. 344. RCW 69.50.416 and 1993 c 187 s 22 are each amended to read as follows:

~~((a))~~ (1) It is unlawful for any person knowingly or intentionally to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.

~~((b))~~ (2) It is unlawful for any person knowingly or intentionally to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.

~~((c))~~ (3) A person who violates this section is guilty of a ~~(crime)~~ class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both.

Sec. 345. RCW 69.50.430 and 1989 c 271 s 106 are each amended to read as follows:

(1) Every person convicted of a felony violation of RCW 69.50.401, sections 332 through 334 and 336 of this act, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

Sec. 346. RCW 69.50.435 and 1997 c 30 s 2 and 1997 c 23 s 1 are each reenacted and amended to read as follows:

~~((a))~~ (1) Any person who violates RCW 69.50.401~~((a))~~ by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under ~~((that subsection))~~ RCW 69.50.401 or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule 1, RCW 69.50.204, except leaves and flowering tops of marijuana to a person:

~~((1))~~ (a) In a school;

~~((2))~~ (b) On a school bus;

~~((3))~~ (c) Within one thousand feet of a school bus route stop designated by the school district;

~~((4))~~ (d) Within one thousand feet of the perimeter of the school grounds;

~~((5))~~ (e) In a public park;

~~((6))~~ (f) In a public housing project designated by a local governing authority as a drug-free zone;

~~((7))~~ (g) On a public transit vehicle;

~~((8))~~ (h) In a public transit stop shelter;

~~((9))~~ (i) At a civic center designated as a drug-free zone by the local governing authority; or

~~((10))~~ (1) Within one thousand feet of the perimeter of a facility designated under ~~((9))~~ (1) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

~~((b))~~ (2) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated by a local governing authority as a drug-free zone, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection ~~((a)(9))~~ (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

~~((e))~~ (3) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated by a local governing authority as a drug-free zone, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection ~~((a)(9))~~ (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

~~((d))~~ (4) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401~~((a))~~ for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

~~((e))~~ (5) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the

governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, transit authority, or public housing authority if the map or diagram is otherwise admissible under court rule.

((~~6~~)) (6) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

((~~4~~)) (a) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

((~~2~~)) (b) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

((~~3~~)) (c) "School bus route stop" means a school bus stop as designated by a school district;

((~~4~~)) (d) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

((~~5~~)) (e) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

((~~6~~)) (f) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

((~~7~~)) (g) "Stop shelter" means a passenger shelter designated by a transit authority;

((~~8~~)) (h) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities;

((~~9~~)) (i) "Public housing project" means the same as "housing project" as defined in RCW 35.82.020.

Sec. 347. RCW 69.50.440 and 2002 c 134 s 1 are each amended to read as follows:

(1) It is unlawful for any person to possess ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine.

(2) Any person who violates this section is guilty of a ~~(crime)~~ class B felony and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost.

Sec. 348. RCW 69.50.505 and 2001 c 168 s 1 are each amended to read as follows:

~~((a))~~ (1) The following are subject to seizure and forfeiture and no property right exists in them:

~~((1))~~ (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

~~((2))~~ (b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

~~((3))~~ (c) All property which is used, or intended for use, as a container for property described in ~~((paragraphs (1) or (2)))~~ (a) or (b) of this subsection;

~~((4))~~ (d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in ~~((paragraphs (1) or (2)))~~ (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under ~~((RCW 69.50.401(e)))~~ section 335 of this act;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

~~((5))~~ (e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

~~((6))~~ (f) All drug paraphernalia;

~~((7))~~ (g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this ~~(paragraph)~~ subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

~~((8))~~ (h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the

security interest was created, neither had knowledge of nor consented to the act or omission.

~~((b))~~ (2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

~~((1))~~ (a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

~~((2))~~ (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

~~((3))~~ (c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

~~((4))~~ (d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

~~((e))~~ (3) In the event of seizure pursuant to subsection ~~((b))~~ (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

~~((d))~~ (4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection ~~((a)(4), (a)(7), or (a)(8))~~ (1)(d), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The

community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

~~((e))~~ (5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection ~~((a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8))~~ (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection ~~((a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8))~~ (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

~~((f))~~ (6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

~~((g))~~ (7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

~~((h))~~ (a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

~~((2))~~ (b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

~~((3))~~ (c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

~~((4))~~ (d) Forward it to the drug enforcement administration for disposition.

~~((h+))~~ (8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

~~((2))~~ (b) Each seizing agency shall retain records of forfeited property for at least seven years.

~~((3))~~ (c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

~~((4))~~ (d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

~~((+))~~ (9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520.

~~((2))~~ (b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection ~~((+))~~ (15) of this section.

~~((3))~~ (c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

~~((+))~~ (10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

~~((+))~~ (11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

~~((+))~~ (12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

~~((+))~~ (13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an

appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

~~((+))~~ (14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

~~((+))~~ (15) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection ~~((g)(2))~~ (7)(h) of this section, only if:

~~((+))~~ (a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

~~((2))~~ (b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under ~~((2))~~ (b) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

~~((3))~~ (c) For any claim filed under ~~((2))~~ (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

~~((p))~~ (16) The landlord's claim for damages under subsection ~~((+))~~ (15) of this section may not include a claim for loss of business and is limited to:

~~((+))~~ (a) Damage to tangible property and clean-up costs;

~~((2))~~ (b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

~~((3))~~ (c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection ~~((g)(2))~~ (7)(b) of this section; and

~~((4))~~ (d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related

to sale of the tenant's property as provided by subsection ~~((+2))~~ (9)(b) of this section.

~~((q))~~ (17) Subsections ~~((o) and (p))~~ (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection ~~((o))~~ (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

Sec. 349. RCW 69.90.020 and 1985 c 127 s 3 are each amended to read as follows:

(1) No person may knowingly sell or offer for sale any food product represented as "kosher" or "kosher style" when that person knows that the food product is not kosher and when the representation is likely to cause a prospective purchaser to believe that it is kosher. Such a representation can be made orally or in writing, or by display of a sign, mark, insignia, or simulation.

(2) A person violating this section is guilty of a gross misdemeanor.

Sec. 350. RCW 70.05.120 and 1999 c 391 s 6 are each amended to read as follows:

(1) Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

(2) Any member of a local board of health who shall violate any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, ~~((shall be))~~ is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

(3) Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, ~~((shall be))~~ is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules,

regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, ~~((shall be))~~ is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment.

Sec. 351. RCW 70.54.090 and 1953 c 185 s 1 are each amended to read as follows:

(1) It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground.

(2) A person violating this section is guilty of a misdemeanor.

Sec. 352. RCW 70.54.160 and 1977 ex.s. c 97 s 1 are each amended to read as follows:

(1) Every establishment which maintains restrooms for use by the public shall not discriminate in charges required between facilities used by men and facilities used by women.

(2) When coin lock controls are used, the controls shall be so allocated as to allow for a proportionate equality of free toilet units available to women as compared with those units available to men, and at least one-half of the units in any restroom shall be free of charge. As used in this section, toilet units are defined as constituting commodes and urinals.

(3) In situations involving coin locks placed on restroom entry doors, admission keys shall be readily provided without charge when requested, and notice as to the availability of the keys shall be posted on the restroom entry door.

(4) Any owner, agent, manager, or other person charged with the responsibility of the operation of an establishment who operates such establishment in violation of this section is guilty of a misdemeanor.

Sec. 353. RCW 70.58.280 and 1915 c 180 s 12 are each amended to read as follows:

(1) Every person who ~~((shall))~~ violates or willfully fails, neglects, or refuses to comply with any provisions of this act ~~((shall-be))~~ is guilty of a misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment~~((and))~~.

(2) Every person who ~~((shall))~~ willfully furnishes any false information for any certificate required by this act or who ~~((shall))~~ makes any false statement in any such certificate ~~((shall be))~~ is guilty of a gross misdemeanor.

Sec. 354. RCW 70.74.180 and 1984 c 55 s 1 are each amended to read as follows:

Any person who has in his or her possession or control any shell, bomb, or similar device, charged or filled with one or more explosives, intending to use it or cause it to be used for an unlawful purpose, is guilty of a class A felony, and upon conviction shall be punished by imprisonment in a state prison for a term of not more than twenty years.

Sec. 355. RCW 70.94.430 and 1991 c 199 s 310 are each amended to read as follows:

(1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto ~~((shall be))~~ is guilty of a ~~((crime))~~ gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm ~~((shall be))~~ is guilty of a ~~((crime))~~ gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, ~~((shall be))~~ is guilty of a ~~((crime))~~ class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 ~~((shall be))~~ is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine ~~((of))~~ of not more than five thousand dollars.

Sec. 356. RCW 70.95D.100 and 1989 c 431 s 74 are each amended to read as follows:

(1) Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, with the exception of incinerator operators, violating any provision of this chapter or the rules adopted under this chapter, is guilty of a misdemeanor.

(2) Any incinerator operator~~((s))~~ who violates any provision of this chapter ~~((shall be))~~ is guilty of a gross misdemeanor.

(3) Each day of operation in violation of this chapter or any rules adopted under this chapter shall constitute a separate offense.

(4) The prosecuting attorney or the attorney general, as appropriate, shall secure injunctions of continuing violations of any provisions of this chapter or the rules adopted under this chapter.

Sec. 357. RCW 70.105.085 and 1989 c 2 s 15 are each amended to read as follows:

(1) Any person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of this chapter is guilty of: ~~((H))~~ (a) A class B felony punishable according to chapter 9A.20 RCW if the person knows at the time that the conduct constituting the violation places another person in imminent danger of death or serious bodily injury; or ~~((2))~~ (b) a class C felony punishable according to chapter 9A.20 RCW if the person knows that the conduct constituting the violation places any property of another person or any natural resources owned by the state of Washington or any of its local governments in imminent danger of harm.

(2) As used in this section ~~((:))~~: (a) "Imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated ~~((-- As used in this section,))~~; and (b) "knowingly" refers to an awareness of facts, not awareness of law. ~~((Violators shall be punished as provided under RCW 9A.20.021.))~~

Sec. 358. RCW 70.106.140 and 1974 ex.s. c 49 s 16 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted ~~((hereunder))~~ under this chapter is guilty of a misdemeanor ~~((and is guilty of)).~~

(2) A second or subsequent violation of the provisions of this chapter or rules adopted under this chapter is a gross misdemeanor ~~((for any subsequent offense, however,)).~~ Any offense committed more than five years after a previous conviction shall be considered a first offense.

Sec. 359. RCW 70.108.130 and 1979 ex.s. c 136 s 104 are each amended to read as follows:

(1) Except as otherwise provided in this section, any person who ~~((shall))~~ willfully fails to comply with the rules, regulations, and conditions set forth in this chapter or who ~~((shall))~~ aids or abets such a violation or failure to comply ~~((-- shall be deemed))~~ is guilty of a gross misdemeanor ~~((-- PROVIDED, That)).~~

(2)(a) Except as provided in (b) of this subsection, violation of such a rule, regulation, or condition relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction ~~((-- except that)).~~

(b) Violation of such a rule, regulation, or condition equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor.

Sec. 360. RCW 70.110.040 and 1973 1st ex.s. c 211 s 4 are each amended to read as follows:

(1) It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204.

(2) A violation of this section is a gross misdemeanor.

Sec. 361. RCW 70.111.030 and 1996 c 158 s 4 are each amended to read as follows:

(1) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after June 6, 1996, a full-size or nonfull-size crib that is unsafe for any infant using the crib.

(2) A crib is presumed to be unsafe pursuant to this chapter if it does not conform to all of the following:

(a) Part 1508 (commencing with Section 1508.1) of Title 16 of the Code of Federal Regulations;

(b) Part 1509 (commencing with Section 1509.1) of Title 16 of the Code of Federal Regulations;

(c) Part 1303 (commencing with Section 1303.1) of Title 16 of the Code of Federal Regulations;

(d) American Society for Testing Materials Voluntary Standards F966-90;

(e) American Society for Testing Materials Voluntary Standards F1169.88;

(f) Any regulations that are adopted in order to amend or supplement the regulations described in (a) through (e) of this subsection.

(3) Cribs that are unsafe or fail to perform as expected pursuant to subsection (2) of this section include, but are not limited to, cribs that have any of the following dangerous features or characteristics:

(a) Corner posts that extend more than one-sixteenth of an inch;

(b) Spaces between side slats more than two and three-eighths inches;

(c) Mattress support that can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five pound upward force from underneath the crib;

(d) Cutout designs on the end panels;

(e) Rail height dimensions that do not conform to the following:

(i) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches;

(ii) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches;

(f) Any screws, bolts, or hardware that are loose and not secured;

(g) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(h) Nonfull-size cribs with tears in mesh or fabric sides.

(4) On or after January 1, 1997, any commercial user who willfully and knowingly violates this section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars. Hotels, motels, and similar transient lodging, child care facilities, and family child care homes are not subject to this section until January 1, 1999.

Sec. 362. RCW 70.122.090 and 1992 c 98 s 9 are each amended to read as follows:

(1) Any person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarer's consent (~~shall be~~) is guilty of a gross misdemeanor.

(2) Any person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in RCW 70.122.040 with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the declarer, and thereby, because of any such act, directly causes life-sustaining treatment to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for murder in the first degree as defined in RCW 9A.32.030.

Sec. 363. RCW 70.127.020 and 2000 c 175 s 2 are each amended to read as follows:

(1) After July 1, 1990, a license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency.

(2) 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.

(3) Any person violating this section is guilty of a misdemeanor. Each day of a continuing violation is a separate violation.

(4) 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.

(5) All fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the department's local fee account.

Sec. 364. RCW 72.23.170 and 1959 c 28 s 72.23.170 are each amended to read as follows:

Any person who procures the escape of any patient of any state hospital for the mentally ill, or institutions for psychopaths to which such patient has been lawfully committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a class C felony and shall be punished by imprisonment in a state ((~~penal~~) correctional) institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine.

Sec. 365. RCW 72.23.300 and 1959 c 28 s 72.23.300 are each amended to read as follows:

Any person not authorized by law so to do, who brings into any state institution for the care and treatment of mental illness or within the grounds thereof, any opium, morphine, cocaine or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 366. RCW 74.08.055 and 1979 c 141 s 323 are each amended to read as follows:

(1) Each applicant for or recipient of public assistance shall make an application for assistance which shall contain or be verified by a written declaration that it is made under the penalties of perjury. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration

shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing.

(2) Any applicant for or recipient of public assistance who willfully makes and subscribes any application, statement or other paper which contains or is verified by a written declaration that it is made under the penalties of perjury and which he or she does not believe to be true and correct as to every material matter (~~shall be~~) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 367. RCW 74.08.100 and 1971 c 81 s 137 are each amended to read as follows:

Proof of age and length of residence in the state of any applicant may be established as provided by the rules and regulations of the department: PROVIDED, That if an applicant is unable to establish proof of age or length of residence in the state by any other method he or she may make a statement under oath of his or her age on the date of application or the length of his or her residence in the state, before any judge of the superior court, any judge of the court of appeals, or any justice of the supreme court of the state of Washington, and such statement shall constitute sufficient proof of age of applicant or of length of residence in the state: PROVIDED HOWEVER, That any applicant who willfully makes a false statement as to his or her age or length of residence in the state under oath before a judge of the superior court, a judge of the court of appeals, or a justice of the supreme court, as provided above, shall be guilty of a class B felony punishable according to chapter 9A.20 RCW.

Sec. 368. RCW 74.08.331 and 1998 c 79 s 16 are each amended to read as follows:

(1) Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled (~~shall be~~) is guilty of (~~grand larceny~~) theft in the first degree under RCW 9A.56.030 and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

(2) Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary (~~shall be~~) is guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year in the county jail or a fine of not to exceed one thousand dollars or by both.

Sec. 369. RCW 76.12.140 and 2000 c 11 s 10 are each amended to read as follows:

(1) 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, 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.

(2)(a) Except as provided in (b) of this subsection, any violation of any ((such)) rule((s shall be)) adopted by the department under the authority of this section is a gross misdemeanor ((unless)).

(b) The department ((has specified)) may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW.

Sec. 370. RCW 76.36.035 and 1987 c 380 s 18 are each amended to read as follows:

(1) All applications for brands, catch brands, renewals, and assignments thereof shall be submitted to and approved by the department prior to use. The department may refuse to approve any brand or catch brand which is identical to or closely resembles a registered brand or catch brand, or is in use by any other person or was not selected in good faith for the marking or branding of forest products. If approval is denied the applicant will select another brand.

(2) The registration for all existing brands or catch brands shall expire on December 31, 1984, unless renewed prior to that date. Renewals or new approved applications shall be for five-year periods or portions thereof beginning on January 1, 1985. On or before September 30, 1984, and September 30th immediately preceding the end of each successive five-year period the department shall notify by mail all registered owners of brands or catch brands of the forthcoming expiration of their brands and the requirements for renewal.

(3) A fee of fifteen dollars shall be charged by the department for registration of all brands, catch brands, renewals or assignments prior to January 1, 1985. Thereafter the fee shall be twenty-five dollars.

(4) Abandoned or canceled brands shall not be reissued for a period of at least one year. The department shall determine the right to use brands or catch brands in dispute by applicants.

((2)) (5) The department may adopt and enforce rules implementing the provisions of this chapter.

(6)(a) Except as provided in (b) of this subsection, a violation of any ((such)) rule ((shall constitute)) adopted by the department under this authority of this section is a misdemeanor ((unless)).

(b) The department ((has specified)) may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW.

Sec. 371. RCW 76.36.110 and 1994 c 163 s 1 are each amended to read as follows:

Every person is guilty of a gross misdemeanor:

(1) Except boom companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who has or takes in tow or into custody or possession or under control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment which may be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(2) Who impresses upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(3) Who interferes with, prevents, or obstructs the owner of any registered mark or brand, or his or her duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or her or retaking any forest products or booming equipment so found by him or her; or,

(4) Who impresses or cuts a catch brand that is not registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is a registered mark or brand as authorized by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that was not purchased or lawfully acquired by him or her from the owner(~~is guilty of a gross misdemeanor~~)).

Sec. 372. RCW 76.36.120 and 1925 ex.s. c 154 s 12 are each amended to read as follows:

Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his or her own use, any forest products or booming equipment having impressed thereupon a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand(~~is guilty of a felony~~)).

Sec. 373. RCW 76.48.120 and 1995 c 366 s 12 are each amended to read as follows:

(1) It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other

instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, knowing the same to be in any manner false, fraudulent, forged, or stolen.

(2) Any person who knowingly or intentionally violates this section is guilty of ~~((forgery, and shall be punished as))~~ a class C felony ~~((providing for))~~ punishable by imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine.

(3) Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified.

Sec. 374. RCW 77.15.194 and 2001 c 1 s 3 are each amended to read as follows:

(1) It is unlawful to use or authorize the use of any steel-jawed leghold trap, neck snare, or other body-gripping trap to capture any mammal for recreation or commerce in fur.

(2) It is unlawful to knowingly buy, sell, barter, or otherwise exchange, or offer to buy, sell, barter, or otherwise exchange the raw fur of a mammal or a mammal that has been trapped in this state with a steel-jawed leghold trap or any other body-gripping trap, whether or not pursuant to permit.

(3) It is unlawful to use or authorize the use of any steel-jawed leghold trap or any other body-gripping trap to capture any animal, except as provided in subsections (4) and (5) of this section.

(4) Nothing in this section prohibits the use of a Conibear trap in water, a padded leghold trap, or a nonstrangling type foot snare with a special permit granted by ~~((the))~~ the director under (a) through (d) of this subsection. Issuance of the special permits shall be governed by rules adopted by the department and in accordance with the requirements of this section. Every person granted a special permit to use a trap or device listed in this subsection shall check the trap or device at least every twenty-four hours.

(a) Nothing in this section prohibits the director, in consultation with the department of social and health services or the United States department of health and human services from granting a permit to use traps listed in this subsection for the purpose of protecting people from threats to their health and safety.

(b) Nothing in this section prohibits the director from granting a special permit to use traps listed in this subsection to a person who applies for such a permit in writing, and who establishes that there exists on a property an animal problem that has not been and cannot be reasonably abated by the use of nonlethal control tools, including but not limited to guard animals, electric fencing, or box and cage traps, or if such nonlethal means cannot be reasonably applied. Upon making a finding in writing that the animal problem has not been and cannot be reasonably abated by nonlethal control tools or if the tools cannot be reasonably applied, the director may authorize the use, setting, placing, or maintenance of the traps for a period not to exceed thirty days.

(c) Nothing in this section prohibits the director from granting a special permit to department employees or agents to use traps listed in this subsection where the use of the traps is the only practical means of protecting threatened or endangered species as designated under RCW 77.08.010.

(d) Nothing in this section prohibits the director from issuing a permit to use traps listed in this subsection, excluding Conibear traps, for the conduct of legitimate wildlife research.

(5) Nothing in this section prohibits the United States fish and wildlife service, its employees or agents, from using a trap listed in subsection (4) of this section where the fish and wildlife service determines, in consultation with the director, that the use of such traps is necessary to protect species listed as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.).

(6) A person violating this section is guilty of a gross misdemeanor.

Sec. 375. RCW 77.15.196 and 2001 c 1 s 4 are each amended to read as follows:

(1) It is unlawful to poison or attempt to poison any animal using sodium fluoroacetate, also known as compound 1080, or sodium cyanide.

(2) A person violating this section is guilty of a gross misdemeanor.

Sec. 376. RCW 77.15.198 and 2001 c 1 s 5 are each amended to read as follows:

~~((Any person who violates RCW 77.15.194 or 77.15.196 is guilty of a gross misdemeanor.))~~ In addition to appropriate criminal penalties, the director shall revoke the trapping license of any person convicted of a violation of RCW 77.15.194 or 77.15.196. The director shall not issue the violator a trapping license for a period of five years following the revocation. Following a subsequent conviction for a violation of RCW 77.15.194 or 77.15.196 by the same person, the director shall not issue a trapping license to the person at any time.

Sec. 377. RCW 78.12.061 and 1890 p 123 s 7 are each amended to read as follows:

(1) It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft at a greater depth than one hundred and fifty feet, unless the ~~((said))~~ shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk, provided the cable shall break. The iron bonnet ~~((aforesaid))~~ shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and shall cover the top of ~~((said))~~ the cage in such manner as to afford the greatest protection to life and limb from any matter falling down ~~((said))~~ the shaft.

(2) Any person or persons, company or companies, or corporation or corporations, who shall neglect, fail, or refuse to comply with this section is guilty of a misdemeanor and shall be fined not less than five hundred dollars nor more than one thousand dollars.

Sec. 378. RCW 79.01.072 and 1988 c 128 s 53 are each amended to read as follows:

If any state land inspector shall knowingly or willfully make any false statement in any report of inspection of lands, or any false estimate of the value of lands inspected or the timber or other valuable materials or improvements thereon, or shall knowingly or willfully divulge anything or give any information in regard to lands inspected by him or her, other than to the commissioner of public lands, the deputy commissioner of public lands, or the board of natural resources, he or she shall forthwith be removed from office, and shall be deemed guilty of a class B felony punishable according to chapter 9A.20 RCW and in such case it shall be the duty of the commissioner of public lands and of the members of the board of natural resources, to report all facts within their knowledge to the proper prosecuting officer to the end that prosecution for the offense may be had.

Sec. 379. RCW 79.01.748 and 1927 c 255 s 197 are each amended to read as follows:

Every person who willfully commits any trespass upon any public lands of the state and cuts down, destroys or injures any timber, or any tree standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, ~~((shall be))~~ is guilty of ((felony)) theft under chapter 9A.56 RCW.

Sec. 380. RCW 79.01.810 and 1994 c 286 s 2 are each amended to read as follows:

(1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.01.805.

(2) A violation of this section is a misdemeanor ~~((punishable in accordance with RCW 9.92.030))~~, and a violation taking place on aquatic lands is subject to the provisions of RCW 79.01.760.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on private tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

Sec. 381. RCW 79.76.290 and 1974 ex.s. c 43 s 29 are each amended to read as follows:

Violation of any provision of this chapter or of any rule, regulation, order of the department, or condition of any permit made hereunder is a gross misdemeanor punishable, upon conviction, by a fine of not more than two thousand five hundred dollars or by imprisonment in the county jail for not more than six months, or both.

Sec. 382. RCW 79A.05.165 and 1997 c 214 s 1 are each amended to read as follows:

(1) Every person is guilty of a misdemeanor who:

~~((1))~~ (a) Cuts, breaks, injures, destroys, takes, or removes any tree, shrub, timber, plant, or natural object in any park or parkway except in accordance with such rules as the commission may prescribe; or

~~((2))~~ (b) Kills, or pursues with intent to kill, any bird or animal in any park or parkway; or

~~((3))~~ (c) Takes any fish from the waters of any park or parkway, except in conformity with such general rules as the commission may prescribe; or

~~((4))~~ (d) Willfully mutilates, injures, defaces, or destroys any guidepost, notice, tablet, fence, inclosure, or work for the protection or ornamentation of any park or parkway; or

~~((5))~~ (e) Lights any fire upon any park or parkway, except in such places as the commission has authorized, or willfully or carelessly permits any fire which he or she has lighted or which is under his or her charge, to spread or extend to or burn any of the shrubbery, trees, timber, ornaments, or improvements upon any park or parkway, or leaves any campfire which he or she has lighted or which has been left in his or her charge, unattended by a competent person, without extinguishing it; or

~~((6))~~ (f) Places within any park or parkway or affixes to any object therein contained, without a written license from the commission, any word, character, or device designed to advertise any business, profession, article, thing, exhibition, matter, or event~~((; or~~

~~(7))~~.

(2)(a) Except as provided in (b) of this subsection, a person who violates any rule adopted, promulgated, or issued by the commission pursuant to the provisions of this chapter~~((; shall be))~~ is guilty of a misdemeanor ~~((unless))~~.

(b) The commission ~~((has specified))~~ may specify by rule, when not inconsistent with applicable statutes, that violation of the rule is an infraction under chapter 7.84 RCW.

Sec. 383. RCW 80.28.190 and 1971 c 81 s 141 are each amended to read as follows:

(1) No gas company shall, after January 1, 1956, operate in this state any gas plant for hire without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity requires or will require such operation and setting forth the area or areas within which service is to be rendered; but a certificate shall be granted where it appears to the satisfaction of the commission that such gas company was actually operating in good faith, within the confines of the area for which such certificate shall be sought, on June 8, 1955. Any right, privilege, certificate held, owned or obtained by a gas company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after hearing, when the applicant requests a certificate to render service in an area already served by a certificate holder under this chapter only when the existing gas company or companies serving such area will not provide the same to the satisfaction of the commission and in all other cases, with or without hearing, to issue ~~((said))~~ the certificate as prayed for; or for good cause shown to refuse to issue same, or to

issue it for the partial exercise only of ~~((said))~~ the privilege sought, and may attach to the exercise of the rights granted by ~~((said))~~ the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

(2) The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proven that such holder willfully violates or refuses to observe any of its proper orders, rules or regulations, suspend, revoke, alter or amend any certificate issued under the provisions of this section, but the holder of such certificate shall have all the rights of rehearing, review and appeal as to such order of the commission as is provided herein.

(3) In all respects in which the commission has power and authority under this chapter applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review to the superior court filed therewith, appeals or mandate filed with the supreme court or the court of appeals of this state considered and disposed of by ~~((said))~~ such courts in the manner, under the conditions, and subject to the limitations and with the effect specified in the Washington utilities and transportation commission laws of this state.

(4) Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any of the provisions of this section or who fails to obey, observe or comply with any order, decision, rule or regulation, directive, demand or requirements, or any provision of this section, is guilty of a gross misdemeanor ~~((and punishable as such))~~.

(5) Neither this section, RCW 80.28.200, 80.28.210, nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union except insofar as the same may be permitted under the provisions of the Constitution of the United States and acts of congress.

(6) The commission shall collect the following miscellaneous fees from gas companies: Application for a certificate of public convenience and necessity or to amend a certificate, twenty-five dollars; application to sell, lease, mortgage or transfer a certificate of public convenience and necessity or any interest therein, ten dollars.

Sec. 384. RCW 80.28.210 and 1969 ex.s. c 210 s 2 are each amended to read as follows:

(1) Every person or corporation transporting natural gas by pipeline, or having for one or more of its principal purposes the construction, maintenance or operation of pipelines for transporting natural gas, in this state, even though such person or corporation not be a public service company under chapter 80.28 RCW, and even though such person or corporation does not deliver, sell or furnish any such gas to any person or corporation within this state, shall be subject to regulation by the utilities and transportation commission insofar as the construction and operation of such facilities shall affect matters of public safety, and every such company shall construct and maintain such facilities as will be

safe and efficient. The commission shall have the authority to prescribe rules and regulations to effectuate the purpose of this enactment.

(2) Every such person and every such officer, agent and employee of a corporation who, as an individual or as an officer or agent of such corporation, violates or fails to comply with, or who procures, aids, or abets another, or his or her company, in the violation of, or noncompliance with, any provision of this section or any order, rule or requirement of the commission hereunder, (~~shall be~~) is guilty of a gross misdemeanor.

Sec. 385. RCW 81.04.390 and 1980 c 104 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, violates any provision of this title, or fails to observe, obey, or comply with any order made by the commission under this title, so long as the same is or remains in force, or who procures, aids, or abets any such corporation in its violation of this title, or in its failure to obey, observe, or comply with any such order, is guilty of a gross misdemeanor(~~-except that~~).

(2) A violation pertaining to equipment on motor carriers transporting hazardous material is a misdemeanor.

Sec. 386. RCW 81.40.010 and 1992 c 102 s 1 are each amended to read as follows:

(1) No law or order of any regulatory agency of this state shall prevent a common carrier by railroad from staffing its passenger trains in accordance with collective bargaining agreements or any national or other applicable settlement of train crew size. In the absence of a collective bargaining agreement or any national or other applicable settlement of train crew size, any common carrier railroad operating a passenger train with a crew of less than two members shall be subject to a safety review by the Washington utilities and transportation commission, which, as to staffing, may issue an order requiring as many as two crew members.

(2) Each train or engine run in violation of this section is a separate offense: PROVIDED, That nothing in this section shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each twenty-four hours.

(3) Any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway in the state of Washington, and engaged as a common carrier, in the transportation of freight or passengers, who violates this section is guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense.

(4) It is the duty of the commission to enforce this section.

Sec. 387. RCW 81.40.040 and 1977 c 70 s 1 are each amended to read as follows:

(1) It (~~shall be~~) is unlawful for any common carrier by railroad or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any train to remain on duty more than twelve consecutive hours, except when by casualty occurring after such employee has started on his

or her trip; or, except by accident or unavoidable delay of trains scheduled to make connection with the train on which such employee is serving, he or she is prevented from reaching his or her terminal; or, to require or permit any such employee who has been on duty twelve consecutive hours to go on duty without having had at least ten hours off duty; or, to require or permit any such employee who has been on duty twelve hours in the aggregate in any twenty-four hour period to continue on duty without having had at least eight hours off duty within the twenty-four hour period.

(2) Any such common carrier, or any of its officers or agents violating this section is guilty of a misdemeanor punishable by a fine of not less than one hundred or more than one thousand dollars for each and every such violation to be recovered in a suit or suits to be brought by the attorney general.

(3) It shall be the duty of the attorney general to bring such suits upon duly verified information being lodged with him or her of such violation having occurred, in any superior court.

(4) It shall also be the duty of the commission to fully investigate all cases of the violation of this section, and to lodge with the attorney general information of any such violation as may come to its knowledge.

Sec. 388. RCW 81.40.060 and 1961 c 14 s 81.40.060 are each amended to read as follows:

(1) It shall be unlawful for any railroad or other transportation company doing business in the state of Washington, or of any officer, agent or servant of such railroad or other transportation company, to require any conductor, engineer, brakeman, fireman, purser, or other employee, as a condition of his or her continued employment, or otherwise to require or compel, or attempt to require or compel, any such employees to purchase of any such railroad or other transportation company or of any particular person, firm or corporation or at any particular place or places, any uniform or other clothing or apparel, required by any such railroad or other transportation company to be used by any such employee in the performance of his or her duties as such; and any such railroad or transportation company or any officer, agent or servant thereof, who shall order or require any conductor, engineer, brakeman, fireman, purser, or other person in its employ, to purchase any uniform or other clothing or apparel as aforesaid, shall be deemed to have required such purchase as a condition of such employee's continued employment.

(2) Any railroad or other transportation company doing business in the state of Washington, or any officer, agent, or servant thereof, violating this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county where the misdemeanor is committed, not exceeding six months.

Sec. 389. RCW 81.40.080 and 1961 c 14 s 81.40.080 are each amended to read as follows:

(1) It shall be unlawful for any railroad company, corporation, association or other person owning, controlling or operating any line of railroad in the state of Washington, to build, construct, reconstruct, or repair railroad car equipment or motive power in this state without first erecting and maintaining at every point where five employees or more are regularly employed on such work, a shed over

a sufficient portion of the tracks used for such work, so as to provide that all men regularly employed in such work shall be sheltered and protected from rain and other inclement weather: PROVIDED, That the provisions of this section shall not apply at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment, nor to equipment on tracks where trains arrive or depart or are assembled or made up for departure. The term "light repairs," as herein used, shall not include repairs usually made in roundhouse, shop or shed upon well equipped railroads.

(2) Any railroad company or officer or agent thereof, or any other person, who violates this section by failing or refusing to comply with its provisions is guilty of a misdemeanor, and each day's failure or refusal to comply shall be considered a separate offense.

Sec. 390. RCW 81.40.130 and 1961 c 14 s 81.40.130 are each amended to read as follows:

(1) It is unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment.

(2) Any employer who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars. Each violation shall constitute a separate offense.

(3) As used in this section:

(a) "Employer" means any common carrier by rail, doing business in or operating within the state, and any subsidiary thereof.

(b) "Employee" means every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment.

Sec. 391. RCW 81.44.085 and 1969 ex.s. c 210 s 7 are each amended to read as follows:

(1) Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or yard switching service, and every car used in passenger service with a first aid kit of a type to be approved by the commission, which kit shall be plainly marked and be readily visible and accessible and be maintained in a fully quipped condition: PROVIDED, That such kits shall not be required on equipment used exclusively in yard or switching service where such kits are maintained in the yard or terminal.

(2) Each locomotive and caboose shall also be furnished with sanitary cups and sanitary ice-cooled drinking water.

(3) For the purpose of this section a "locomotive" shall include all railroad engines propelled by any form of energy and used in rail line haul or yard switching service.

(4) Any person violating (~~any provisions of~~) this section (~~shall be~~) is guilty of a misdemeanor.

Sec. 392. RCW 81.54.030 and 1991 c 46 s 1 are each amended to read as follows:

(1) Every person operating any logging railroad or industrial railway shall, prior to July 1st of each year, file with the commission a statement showing the number of, and location, by name of highway, quarter section, section, township,

and range of all crossings on his or her line and pay with the filing a fee for each crossing so reported. The commission shall, by order, fix the exact fee based on the cost of rendering such inspection service. All fees collected shall be deposited in the state treasury to the credit of the public service revolving fund. Intersections having one or more tracks shall be treated as a single crossing. Tracks separated a distance in excess of one hundred feet from the nearest track or group of tracks shall constitute an additional crossing. Where two or more independently operated railroads cross each other or the same highway intersection, each independent track shall constitute a separate crossing.

(2) Every person failing to make the report and pay the fees as required(~~;~~ ~~shall be~~) by this section is guilty of a misdemeanor and in addition (~~be~~) subject to a penalty of twenty-five dollars for each day that the fee remains unpaid after it becomes due.

Sec. 393. RCW 81.56.150 and 1961 c 14 s 81.56.150 are each amended to read as follows:

(1) It shall be the duty of every person or corporation engaged wholly or in part in the business of carrying passengers for hire, to provide every agent authorized to sell its passage tickets in this state, with a certificate of his or her authority, attested by its seal and the signature of its manager, secretary or general passenger agent, which shall contain a designation of the place of business at which such authority shall be exercised.

(2) Every person and every corporation or association, and every officer, agent or employee thereof who shall sell, exchange or transfer, or have in his or her possession with intent to sell, exchange or transfer, or maintain, conduct or operate any office or place of business for the sale, exchange or transfer of any passage ticket or pass or part thereof, or any other evidence of a right to travel upon any railroad or boat, whether the same be owned or operated within or without the limits of this state, in any place except his or her place of business, or within such place of business without having rightfully in his or her possession and posted in a conspicuous place therein the certificate of authority (~~hereinabove provided for, shall be~~) required by this section is guilty of a misdemeanor.

Sec. 394. RCW 81.60.070 and 1999 c 352 s 4 are each amended to read as follows:

Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway, and every person who shall discharge any firearm or throw any dangerous missile at any train, engine, motor, or car on any railway, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years.

Sec. 395. RCW 81.60.080 and 1992 c 7 s 61 are each amended to read as follows:

(1) Any person or persons who shall willfully or maliciously, with intent to injure or deprive the owner thereof, take, steal, remove, change, add to, alter, or in any manner interfere with any journal bearing, brass, waste, packing, triple

valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad or railway company in this state, ~~((shall be))~~ is guilty of a class C felony, and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

(2) Every person who buys or receives any of the property described in subsection (1) of this section, knowing the same to have been stolen, is guilty of a class C felony, and upon conviction thereof shall be punished as provided in subsection (1) of this section.

Sec. 396. RCW 81.64.090 and 1961 c 14 s 81.64.090 are each amended to read as follows:

(1) Street railway or street car companies, or street car corporations, shall employ none but competent men to operate or assist as conductors, motormen or gripmen upon any street railway, or streetcar line in this state.

(2) A person shall be deemed competent to operate or assist in operating cars or (dummies) usually used by street railway or streetcar companies, or corporations, only after first having served at least three days under personal instruction of a regularly employed conductor, motorman, or gripman on a car or dummy in actual service on the particular street railway or streetcar line for which the service of an additional person or additional persons may be required: PROVIDED, That during a strike on the streetcar lines the railway companies may employ competent persons who have not worked three days on the particular streetcar line.

(3) Any violation of this section by the president, secretary, manager, superintendent, assistant superintendent, stockholder, or other officer or employee of any company or corporation owning or operating any street railway or streetcar line or any receiver of street railway or streetcar company, or street railway or streetcar corporations appointed by any court within this state to operate such car line is a misdemeanor punishable by a fine in any amount not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a term of thirty days, or both such fine and imprisonment at the discretion of the court.

Sec. 397. RCW 81.64.160 and 1961 c 14 s 81.64.160 are each amended to read as follows:

(1) No person, agent, officer, manager, or superintendent or receiver of any corporation or owner of streetcars shall require his, her, or its gripmen, motormen, drivers, or conductors to work more than ten hours in any twenty-four hours.

(2) Any person, agent, officer, manager, superintendent, or receiver of any corporation, or owner of streetcar or cars, violating this section is guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars for each day in which such gripman, motorman, driver, or conductor in the employ of such person, agent, officer, manager, superintendent, or receiver of such corporation or owner is required to work more than ten hours during each twenty-four hours, as provided in this section.

(3) It is the duty of the prosecuting attorney of each county of this state to institute the necessary proceedings to enforce the provisions of this section.

Sec. 398. RCW 81.68.080 and 1979 ex.s. c 136 s 106 are each amended to read as follows:

(1) Except as otherwise provided in this section, every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement, or any part of provision thereof, is guilty of a gross misdemeanor ((and punishable as such: PROVIDED, That)).

(2)(a) Except as provided in (b) of this subsection, violation of such an order, decision, rule or regulation, direction, demand, or requirement relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction((, except that)).

(b) Violation of such an order, decision, rule or regulation, direction, demand, or requirement equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor.

Sec. 399. RCW 82.08.0273 and 1993 c 444 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state of tangible personal property for use outside this state when the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as herein provided.

(b) Acceptable proof of a nonresident person's status shall include one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (2)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(3) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale

which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(4)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax (~~(shall be)~~) is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, (~~(shall be)~~) is guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

~~((b))~~ (5)(a) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, shall be personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent (~~(shall be)~~) is guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor shall be liable for any penalties and interest assessable under chapter 82.32 RCW.

Sec. 400. RCW 82.08.050 and 2001 c 188 s 4 are each amended to read as follows:

(1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter (~~(shall be)~~) is guilty of a gross misdemeanor.

(3) In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer in good faith a properly executed resale certificate under RCW 82.04.470 or a copy of a direct pay permit issued under RCW 82.32.087.

(4) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who 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 buyer who refuses to pay any tax due under this chapter (~~(shall be)~~) is guilty of a misdemeanor.

(5) The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(6) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer 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 buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

Sec. 401. RCW 82.36.330 and 1998 c 176 s 39 are each amended to read as follows:

(1) Upon the approval of the director of the claim for refund, the state treasurer shall draw a warrant upon the state treasury for the amount of the claim in favor of the person making such claim and the warrant shall be paid from the excise tax collected on motor vehicle fuel: PROVIDED, That the state treasurer shall deduct from each marine use refund claim an amount equivalent to one cent per gallon and shall deposit the same in the coastal protection fund created by RCW 90.48.390.

(2) Applications for refunds of excise tax shall be filed in the office of the director not later than the close of the last business day of a period thirteen months from the date of purchase of such motor fuel, and if not filed within this period the right to refund shall be forever barred, except that such limitation shall not apply to claims for loss or destruction of motor vehicle fuel as provided by the provisions of RCW 82.36.370.

(3) The department shall pay interest of one percent on any refund payable under this chapter that is issued more than thirty state business days after the receipt of a claim properly filed and completed in accordance with this section. After the end of the thirty business-day period, additional interest shall accrue at the rate of one percent on the amount payable for each thirty calendar-day period, until the refund is issued.

(4) Any person or the member of any firm or the officer or agent of any corporation who makes any false statement in any claim required for the refund of excise tax, as provided in this chapter, or who collects or causes to be repaid to him or her or to any other person any such refund without being entitled to the same under the provisions of this chapter (~~shall be~~) is guilty of a gross misdemeanor.

Sec. 402. RCW 82.36.400 and 1998 c 176 s 46 are each amended to read as follows:

(1) It shall be unlawful for any person to commit any of the following acts:

~~((1))~~ (a) To display, or cause to permit to be displayed, or to have in possession, any motor vehicle fuel license knowing the same to be fictitious or to have been suspended, canceled, revoked or altered;

~~((2))~~ (b) To lend to, or knowingly permit the use of, by one not entitled thereto, any motor vehicle fuel license issued to the person lending it or permitting it to be used;

~~((3))~~ (c) To display or to represent as one's own any motor vehicle fuel license not issued to the person displaying the same;

~~((4))~~ (d) To use a false or fictitious name or give a false or fictitious address in any application or form required under the provisions of this chapter, or otherwise commit a fraud in any application, record, or report;

~~((5))~~ (e) To refuse to permit the director, or any agent appointed by him or her in writing, to examine his or her books, records, papers, storage tanks, or other equipment pertaining to the use or sale and delivery of motor vehicle fuels within the state.

(2) Except as otherwise provided, any person violating any of the provisions of this chapter ~~((shall be))~~ is guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for not more than one year, or both.

Sec. 403. RCW 82.44.120 and 1993 c 307 s 3 are each amended to read as follows:

(1) Whenever any person has paid a motor vehicle license fee, and together therewith has paid an excise tax imposed under the provisions of this chapter, and the director determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under the provisions of this chapter. In case the director determines that any person is entitled to a refund of only a part of the license fee so paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected.

(2) In case no claim is to be made for the refund of the license fee or any part thereof, but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that such person is entitled to a refund in such amount.

(3) In any case where due to error, a person has been required to pay an excise tax pursuant to this chapter and a vehicle license fee pursuant to Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Conversely, if due to error, the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

(4) Any claim for refund of an erroneously excessive amount of excise tax or overpayment of excise tax with a motor vehicle license fee must be filed with the director within three years after the claimed erroneous payment was made.

(5) If the department approves the claim it shall notify the state treasurer to that effect, and the treasurer shall make such approved refunds from the general fund and shall mail or deliver the same to the person entitled thereto.

(6) Any person making any false statement under which he or she obtains any amount of refund to which he or she is not entitled under the provisions of this section is guilty of a gross misdemeanor.

Sec. 404. RCW 82.45.090 and 1993 sp.s. c 25 s 506 are each amended to read as follows:

(1) Except for a sale of a beneficial interest in real property where no instrument evidencing the sale is recorded in the official real property records of the county in which the property is located, the tax imposed by this chapter shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. In collecting the tax the treasurer shall act as agent for the state. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used floating home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer.

(2) For a sale of a beneficial interest in real property where a tax is due under this chapter and where no instrument is recorded in the official real property records of the county in which the property is located, the sale shall be reported to the department of revenue within five days from the date of the sale on such returns or forms and according to such procedures as the department may prescribe. Such forms or returns shall be signed by both the transferor and the transferee and shall be accompanied by payment of the tax due.

(3) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter (~~shall be~~) is guilty of perjury under chapter 9A.72 RCW.

Sec. 405. RCW 82.49.065 and 1992 c 154 s 4 are each amended to read as follows:

(1) Whenever any person has paid a vessel license fee, and with the fee has paid an excise tax imposed under this chapter, and the director of licensing determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under this chapter together with interest at the rate specified in RCW 82.32.060. If the director determines that any person is entitled to a refund of only a part of the license fee paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and

that which should have been collected together with interest at the rate specified in RCW 82.32.060. The state treasurer shall determine the amount of such refund by reference to the applicable excise tax schedule prepared by the department of revenue in cooperation with the department of licensing.

(2) If no claim is to be made for the refund of the license fee, or any part of the fee, but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department of licensing shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that the person is entitled to a refund in that amount together with interest at the rate specified in RCW 82.32.060.

(3) If due to error a person has been required to pay an excise tax pursuant to this chapter and a license fee under chapter 88.02 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

(4) If the department approves the claim, it shall notify the state treasurer to that effect and the treasurer shall make such approved refunds and the other refunds provided for in this section from the general fund and shall mail or deliver the same to the person entitled to the refund.

(5) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

Sec. 406. RCW 82.50.170 and 1992 c 154 s 6 are each amended to read as follows:

(1) In case a claim is made by any person that the person has erroneously paid the tax or a part thereof or any charge hereunder, the person may apply in writing to the department of licensing for a refund of the amount of the claimed erroneous payment within thirteen months of the time of payment of the tax on such a form as is prescribed by the department of licensing. The department of licensing shall review such application for refund, and, if it determines that an erroneous payment has been made by the taxpayer, it shall certify the amount to be refunded to the state treasurer that such person is entitled to a refund in such amount together with interest at the rate specified in RCW 82.32.060, and the treasurer shall make such approved refund together with interest at the rate specified in RCW 82.32.060 herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

(2) If due to error a person has been required to pay an excise tax under this chapter and a vehicle license fee under Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which

underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

(3) Any person making any false statement in the claim herein mentioned, under which the person obtains any amount of refund to which the person is not entitled under the provisions of this section, ~~((shall be))~~ is guilty of a gross misdemeanor.

Sec. 407. RCW 84.08.050 and 1973 c 95 s 8 are each amended to read as follows:

(1) The department of revenue shall:

~~((1))~~ (a) Require individuals, partnerships, companies, associations and corporations to furnish information as to their capital, funded debts, investments, value of property, earnings, taxes and all other facts called for on these subjects so that the department may determine the taxable value of any property or any other fact it may consider necessary to carry out any duties now or hereafter imposed upon it, or may ascertain the relative burdens borne by all kinds and classes of property within the state, and for these purposes their records, books, accounts, papers and memoranda shall be subject to production and inspection, investigation and examination by ~~((said))~~ the department, or any employee thereof designated by ~~((said))~~ the department for such purpose, and any or all real and/or personal property in this state shall be subject to visitation, investigation, examination and/or listing at any and all times by the department or by any employee thereof designated by ~~((said))~~ the department.

~~((2))~~ (b) Summon witnesses to appear and testify on the subject of capital, funded debts, investments, value of property, earnings, taxes, and all other facts called for on these subjects, or upon any matter deemed material to the proper assessment of property, or to the investigation of the system of taxation, or the expenditure of public funds for state, county, district and municipal purposes: PROVIDED, HOWEVER, No person shall be required to testify outside of the county in which the taxpayer's residence, office or principal place of business, as the case may be, is located. Such summons shall be served in like manner as a subpoena issued out of the superior court and be served by the sheriff of the proper county, and such service certified by him or her to ~~((said))~~ the department without compensation therefor. Persons appearing before ~~((said))~~ the department in obedience to a summons shall in the discretion of the department receive the same compensation as witnesses in the superior court.

(c) Thoroughly investigate all complaints which may be made to it of illegal, unjust or excessive taxation, and shall endeavor to ascertain to what extent and in what manner, if at all, the present system is inequal or oppressive.

(2) Any member of the department or any employee thereof designated for that purpose may administer oaths to witnesses.

(3)(a) In case any witness shall fail to obey the summons to appear, or refuse to testify, or shall fail or refuse to comply with any of the provisions of subsection~~((s))~~ (1) ~~((and -2))~~ (a) or (b) of this section, such person, for each separate or repeated offense, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars, nor more than five thousand dollars.

(b) Any person who shall testify falsely ~~((shall be))~~ is guilty of perjury and shall be punished ~~((for perjury))~~ under chapter 9A.72 RCW.

~~((3) Thoroughly investigate all complaints which may be made to it of illegal, unjust or excessive taxation, and shall endeavor to ascertain to what extent and in what manner, if at all, the present system is unequal or oppressive.))~~

Sec. 408. RCW 84.36.387 and 1992 c 206 s 14 are each amended to read as follows:

(1) All claims for exemption shall be made and signed by the person entitled to the exemption, by his or her attorney in fact or in the event the residence of such person is under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, by such holder or by the owner, either before two witnesses or the county assessor or his or her deputy in the county where the real property is located: PROVIDED, That if a claim for exemption is made by a person living in a cooperative housing association, corporation, or partnership, such claim shall be made and signed by the person entitled to the exemption and by the authorized agent of such cooperative.

(2) If the taxpayer is unable to submit his or her own claim, the claim shall be submitted by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(3) All claims for exemption and renewal applications shall be accompanied by such documented verification of income as shall be prescribed by rule adopted by the department of revenue.

(4) Any person signing a false claim with the intent to defraud or evade the payment of any tax ~~((shall be))~~ is guilty of ~~((the offense of))~~ perjury under chapter 9A.72 RCW.

(5) The tax liability of a cooperative housing association, corporation, or partnership shall be reduced by the amount of tax exemption to which a claimant residing therein is entitled and such cooperative shall reduce any amount owed by the claimant to the cooperative by such exact amount of tax exemption or, if no amount be owed, the cooperative shall make payment to the claimant of such exact amount of exemption.

(6) A remainderman or other person who would have otherwise paid the tax on real property that is the subject of an exemption granted under RCW 84.36.381 for an estate for life shall reduce the amount which would have been payable by the life tenant to the remainderman or other person to the extent of the exemption. If no amount is owed or separately stated as an obligation between these persons, the remainderman or other person shall make payment to the life tenant in the exact amount of the exemption.

Sec. 409. RCW 84.40.120 and 1961 c 15 s 84.40.120 are each amended to read as follows:

(1) Any oath authorized to be administered under this title may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths.

(2) Any person willfully making a false list, schedule, or statement under oath ~~((shall be liable as in case))~~ is guilty of perjury under chapter 9A.72 RCW.

Sec. 410. RCW 84.40.340 and 1997 c 239 s 3 are each amended to read as follows:

(1) For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or his or her trained

and qualified deputy at any reasonable time may visit, investigate and examine any personal property, and for this purpose the records, accounts and inventories also shall be subject to any such visitation, investigation and examination which shall aid in determining the amount and valuation of such property. Such powers and duties may be performed at any office of the taxpayer in this state, and the taxpayer shall furnish or make available all such information pertaining to property in this state to the assessor although the records may be maintained at any office outside this state.

(2) Any information or facts obtained pursuant to this section shall be used by the assessor only for the purpose of determining the assessed valuation of the taxpayer's property: PROVIDED, That such information or facts shall also be made available to the department of revenue upon request for the purpose of determining any sales or use tax liability with respect to personal property, and except in a civil or criminal judicial proceeding or an administrative proceeding in respect to penalties imposed pursuant to RCW 84.40.130, to such sales or use taxes, or to the assessment or valuation for tax purposes of the property to which such information and facts relate, shall not be disclosed by the assessor or the department of revenue without the permission of the taxpayer to any person other than public officers or employees whose duties relate to valuation of property for tax purposes or to the imposition and collection of sales and use taxes, and any violation of this secrecy provision (~~shall constitute~~) is a gross misdemeanor.

Sec. 411. RCW 87.03.200 and 1983 c 167 s 213 are each amended to read as follows:

(1) At the election provided for in RCW 87.03.190, there shall be submitted to the electors of (~~said~~) the district possessing the qualifications prescribed by law the question of whether or not the bonds of (~~said~~) the district in the amount and of the maturities determined by the board of directors shall be issued. Bonds issued under the provisions of this act shall be serial bonds payable in legal currency of the United States in such series and amounts as shall be determined and declared by the board of directors in the resolution calling the election: PROVIDED, That the first series shall mature not later than ten years and the last series not later than forty years from the date thereof: PROVIDED FURTHER, That bonds, authorized by a special election held in the district under the provisions of a former statute, which has subsequent to (~~said~~) the authorization been amended, but not issued prior to the amendment of (~~said~~) the former statute, may be issued in the form provided in (~~said~~) the former statute, and any such bonds heretofore or hereafter so issued and sold are hereby confirmed and validated.

Notice of such bond election must be given by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least two weeks (three times). Such notices must specify the time of holding the election, and the amount and maturities of bonds proposed to be issued; and (~~said~~) the election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of law governing the election of the district officers: PROVIDED, That no informality in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the

words "Bonds Yes" and "Bonds No," or words equivalent thereto. If a majority of the votes cast are cast "Bonds Yes," the board of directors shall thereupon have authority to cause bonds in ~~((said))~~ such amount and maturities to be issued. If the majority of the votes cast at any bond election are "Bonds No," the result of such election shall be so declared and entered of record; but if contract is made or is to be made with the United States as in RCW 87.03.140 provided, and bonds are not to be deposited with the United States in connection with such contract, the question submitted at such special election shall be whether contract shall be entered into with the United States. The notice of election shall state under the terms of what act or acts of congress contract is proposed to be made, and the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest. The ballots for such election shall contain the words "Contract with the United States Yes" and "Contract with the United States No," or words equivalent thereto. And whenever thereafter ~~((said))~~ the board, in its judgment, deems it for the best interest of the district that the question of issuance of bonds for ~~((said))~~ such amount, or any amount, or the question of entering into a contract with the United States, shall be submitted to ~~((said))~~ the electors, it shall so declare, by resolution recorded in its minutes, and may thereupon submit such question to ~~((said))~~ the electors in the same manner and with like effect as at such previous election.

(2) All bonds issued under this act shall bear interest at such rate or rates as the board of directors may determine, payable semiannually on the first day of January and of July of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the office of the board of directors is situated, or if the board of directors shall so determine at the fiscal agency of the state of Washington in New York City, ~~((said))~~ the place of payment to be designated in the bond. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one hundred dollars. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. ~~((said))~~ The bonds shall be negotiable in form, signed by the president and secretary, and the seal of the district shall be affixed thereto. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: PROVIDED, That such facsimile signatures on the bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his or her manual signature certified by him or her under oath, whereupon that officer's facsimile signature has the same legal effect as his or her manual signature: PROVIDED, FURTHER, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: AND PROVIDED FURTHER, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons upon which such facsimile signature is to be printed, engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed. Within ninety days after the completion of the printing,

engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or any coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, ~~((shall be))~~ is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Whenever the electors shall vote to authorize the issuance of bonds of the district such authorization shall nullify and cancel all unsold bonds previously authorized, and if the question is submitted to and carried by the electors at the bond election, any bond issue may be exchanged in whole or in part, at par, for any or all of a valid outstanding bond issue of the district when mutually agreeable to the owner or owners thereof and the district, and the amount of ~~((said))~~ the last bond issue in excess, if any, of that required for exchange purposes, may be sold as in the case of an original issue. The bonds of any issue authorized to be exchanged in whole or in part for outstanding bonds shall state on their face the amount of such issue so exchanged, and shall contain a certificate of the treasurer of the district as to the amount of the bonds exchanged, and that ~~((said))~~ the outstanding bonds have been surrendered and canceled: PROVIDED FURTHER, That where bonds have been authorized and unsold, the board of directors may submit to the qualified voters of the district the question of canceling ~~((said))~~ the previous authorization, which question shall be submitted upon the same notice and under the same regulations as govern the submission of the original question of authorizing a bond issue. At such election the ballots shall contain the words "Cancellation Yes," and "Cancellation No," or words equivalent thereto. If at such election a majority of the votes ~~((shall be))~~ are "Cancellation Yes," the ~~((said))~~ the issue shall be thereby canceled and no bonds may be issued thereunder. If the majority of ~~((said))~~ the ballots ~~((shall be))~~ are "Cancellation No," ~~((said))~~ the original authorization shall continue in force with like effect as though ~~((said))~~ the cancellation election had not been held: PROVIDED, That bonds deposited with the United States in payment or in pledge may call for the payment of such interest at such rate or rates, may be of such denominations, and call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior.

(4) Each issue shall be numbered consecutively as issued, and the bonds of each issue shall be numbered consecutively and bear date at the time of their issue. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. ~~((Said))~~ The bonds shall express upon their face that they were issued by authority of this act, stating its title and date of approval, and shall also state the number of issue of which such bonds are a part. In case the money received by the sale of all bonds issued be insufficient for the completion of plans of the canals and works adopted, and additional bonds be not voted, or a contract calling for additional payment to the United States be not authorized and made, as the case may be, it shall be the duty of the board of directors to provide for the completion of ~~((said))~~ the plans by levy of

assessments therefor. It shall be lawful for any irrigation districts which have heretofore issued and sold bonds under the law then in force, to issue in place thereof an amount of bonds not in excess of such previous issue, and to sell the same, or any part thereof, as hereinafter provided, or exchange the same, or any part thereof, with the owners of such previously issued bonds which may be outstanding, upon such terms as may be agreed upon between the board of directors of the district and the holders of such outstanding bonds: PROVIDED, That the question of such reissue of bonds shall have been previously voted upon favorably by the legally qualified electors of such district, in the same manner as required for the issue of original bonds, and the ((said)) board shall not exchange any such bonds for a less amount in par value of the bonds received; all of such old issue in place of which new bonds are issued shall be destroyed whenever lawfully in possession of ((said)) the board. Bonds issued under the provisions of this section may, when so authorized by the electors, include a sum sufficient to pay the interest thereon for a period not exceeding the first four years. Whenever an issue of bonds shall have been authorized pursuant to law, and any of the earlier series shall have been sold, and the later series, or a portion thereof, remain unsold, the directors may sell such later series pursuant to law, or such portion thereof as shall be necessary to pay the earlier series, or ((said)) the directors may exchange ((said)) the later series for the earlier series at not less than the par value thereof, ((said)) the sale or exchange to be made not more than six months before the maturity of ((said)) the earlier series and upon ((said)) the exchange being made the maturing bonds shall be disposed of as hereinbefore provided in the case of bonds authorized to be exchanged in whole or in part for outstanding bonds.

(5) Notwithstanding subsections (1) through (4) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

Sec. 412. RCW 87.03.490 and 1983 c 167 s 223 are each amended to read as follows:

(1) If decision shall be rendered in favor of the improvement, the board shall enter an order establishing the boundaries of the ((said)) improvement district and shall adopt plans for the proposed improvement and determine the number of annual installments not exceeding fifty in which the cost of ((said)) the improvement shall be paid. The cost of ((said)) the improvement shall be provided for by the issuance of local improvement district bonds of the district from time to time, therefor, either directly for the payment of the labor and material or for the securing of funds for such purpose, or by the irrigation district entering into a contract with the United States or the state of Washington, or both, to repay the cost of ((said)) the improvement. ((Said)) The bonds shall bear interest at a rate or rates determined by the board, payable semiannually, and shall state upon their face that they are issued as bonds of the irrigation district; that all lands within ((said)) the local improvement district shall be primarily liable to assessment for the principal and interest of ((said)) the bonds and that ((said)) the bonds are also a general obligation of the ((said)) district. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one hundred dollars, and no bond shall be sold for less than par. Any contract entered into for ((said)) the local improvement by the district with the United States or the state of Washington, or

both although all the lands within ((said)) the local improvement district shall be primarily liable to assessment for the principal and interest thereon, shall be a general obligation of the irrigation district. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) No election shall be necessary to authorize the issuance of such local improvement bonds or the entering into of such a contract. Such bonds, when issued, shall be signed by the president and secretary of the irrigation district with the seal of ((said)) the district affixed. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: PROVIDED, That such facsimile signatures on the bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his or her manual signature certified by him or her under oath, whereupon that officer's facsimile signature has the same legal effect as his or her manual signature: PROVIDED, FURTHER, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: AND PROVIDED FURTHER, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons upon which such facsimile signature is to be printed, engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, ((shall be)) is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) The proceeds from the sale of such bonds shall be deposited with the treasurer of the district, who shall place them in a special fund designated "Construction fund of local improvement district number"

(4) Whenever such improvement district has been organized, the boundaries thereof may be enlarged to include other lands which can be served or will be benefited by the proposed improvement upon petition of the owners thereof and the consent of the United States or the state of Washington, or both, in the event the irrigation district has contracted with the United States or the state of Washington, or both, to repay the cost of the improvement: PROVIDED, That at such time the lands so included shall pay their equitable proportion upon the basis of benefits of the improvement theretofore made by the ((said)) local improvement district and shall be liable for the indebtedness of the ((said)) local improvement district in the same proportion and same manner and subject to assessment as if ((said)) the lands had been incorporated in ((said)) the improvement district at the beginning of its organization.

~~((2))~~ (5) Notwithstanding ~~((subsection (1) of))~~ this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

Sec. 413. RCW 88.02.055 and 1997 c 22 s 2 are each amended to read as follows:

(1) Whenever any license fee paid under this chapter has been erroneously paid, in whole or in part, the person paying the fee, upon satisfactory proof to the director of licensing, is entitled to a refund of the amount erroneously paid.

(2) A license fee is refundable in one or more of the following circumstances: ~~((1))~~ (a) If the vessel for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; ~~((2))~~ (b) if the vessel for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; ~~((3))~~ (c) if the vessel license was purchased after the owner has sold the vessel; ~~((4))~~ (d) if the vessel is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable; or ~~((5))~~ (e) if the vessel for which the renewal license was purchased is sold before the beginning date of the registration period for which the renewal fee was paid, and the payor returns the new, unused, never affixed license renewal decal to the department before the beginning of the registration period for which the registration was purchased.

(3) Upon the refund being certified as correct to the state treasurer by the director and being claimed in the time required by law, the state treasurer shall mail or deliver the amount of each refund to the person entitled to the refund.

(4) A claim for refund shall not be allowed for erroneous payments unless the claim is filed with the director within three years after such payment was made.

(5) If due to error a person has been required to pay a license fee under this chapter and excise tax which amounts to an overpayment of ten dollars or more, the person is entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect the additional amount as will constitute full payment of the tax and fees.

(6) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor.

Sec. 414. RCW 88.02.118 and 2000 c 229 s 6 are each amended to read as follows:

It is a gross misdemeanor punishable as provided under chapter 9A.20 RCW for any person owning a vessel subject to taxation under chapter 82.49 RCW to register a vessel in another state to avoid Washington state vessel excise tax required under chapter 82.49 RCW or to obtain a vessel dealer's registration for the purpose of evading excise tax on vessels under chapter 82.49 RCW. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be

suspended or deferred. Excise taxes owed and fines assessed will be deposited in the manner provided under RCW 46.16.010~~((2))~~ (4).

Sec. 415. RCW 88.08.020 and 1992 c 7 s 62 are each amended to read as follows:

Every person who, in such manner as might, if not discovered, endanger a vessel, railway engine, motor, train, or car, shall show, mask, extinguish, alter, or remove any light or signal, or exhibit any false light or signal, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years.

Sec. 416. RCW 88.08.050 and 1992 c 7 s 63 are each amended to read as follows:

Every person who shall willfully break, injure, deface, or destroy any lighthouse station, post, platform, step, lamp, or other structure pertaining to such lighthouse station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished ~~((as follows))~~:

(1) As a class B felony punishable by imprisonment in a state correctional facility for not more than ten years whenever such act may endanger the safety of any vessel navigating such waters, or jeopardize the safety of any person or property in or upon such vessel~~((, by imprisonment in a state correctional facility for not more than ten years))~~.

(2) In all other cases by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both.

Sec. 417. RCW 88.46.080 and 2000 c 69 s 8 are each amended to read as follows:

(1) Except as provided in subsection ~~((2))~~ (3) 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.

(2)(a) The first conviction under this section ~~((shall be))~~ is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction ~~((shall be))~~ is a class C felony under chapter 9A.20 RCW.

~~((2))~~ (3) 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 department as required by this chapter and rules adopted by the department and the 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))~~ (4) A person may rely on a copy of the statement issued by the 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))~~ (5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the director or a court in pursuance thereof (~~(shall be deemed)~~) is 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. 418. RCW 90.03.400 and 1917 c 117 s 40 are each amended to read as follows:

(1) The unauthorized use of water to which another person is entitled or the willful or negligent waste of water to the detriment of another, (~~(shall be)~~) is a misdemeanor.

(2) The possession or use of water without legal right shall be prima facie evidence of the guilt of the person using it.

(3) It (~~(shall)~~) is also (~~(be)~~) a misdemeanor to use, store, or divert any water until after the issuance of permit to appropriate such water.

Sec. 419. RCW 90.48.140 and 1992 c 73 s 26 are each amended to read as follows:

Any person found guilty of willfully violating any of the provisions of this chapter or chapter 90.56 RCW, or any final written orders or directive of the department or a court in pursuance thereof (~~(shall be deemed)~~) is guilty of a (~~(crime)~~) gross misdemeanor, 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 or chapter 90.56 RCW occurs may be deemed a separate and additional violation.

Sec. 420. RCW 90.56.300 and 1992 c 73 s 34 are each amended to read as follows:

(1) Except as provided in subsection (~~((2))~~) (3) 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 an onshore or offshore facility 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.

(2)(a) The first conviction under this section (~~(shall be)~~) is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction (~~(shall be)~~) is a class C felony under chapter 9A.20 RCW.

~~((2))~~ (3) It shall not be unlawful for the owner or operator to operate an onshore or offshore facility if:

(a) The facility is not required to have a contingency plan, spill prevention plan, or financial responsibility; or

(b) All required plans have been submitted to the department as required by RCW 90.56.210 and rules adopted by the department and the department is reviewing the plan and has not denied approval.

~~((3))~~ (4) A person may rely on a copy of the statement issued by the department pursuant to RCW 90.56.210(7) as evidence that a facility has an approved contingency plan and the statement issued pursuant to RCW 90.56.200(4) that a facility has an approved prevention plan.

NEW SECTION. Sec. 421. The following acts or parts of acts are each repealed:

- (1) RCW 9.16.090 (Petroleum products—Penalty) and 1927 c 222 s 2;
- (2) RCW 9.18.140 (Penalty) and 1921 c 12 s 3;
- (3) RCW 9.45.230 (Penalty) and 1983 c 3 s 8 & 1890 p 99 s 4;
- (4) RCW 9.61.170 (Threats to bomb or injure property—Hoax no defense) and 1959 c 141 s 2;
- (5) RCW 9.61.180 (Threats to bomb or injure property—Penalty) and 1977 ex.s. c 231 s 2 & 1959 c 141 s 3;
- (6) RCW 9.68A.140 (Definitions) and 1987 c 396 s 1;
- (7) RCW 9.68A.160 (Penalty) and 1987 c 396 s 3;
- (8) RCW 9.86.050 (Penalty) and 1919 c 107 s 5;
- (9) RCW 9.94.020 (Prison riot—Penalty) and 1995 c 314 s 2, 1992 c 7 s 19, & 1955 c 241 s 2;
- (10) RCW 10.79.045 (Search without warrant unlawful—Penalty) and 1921 c 71 s 2;
- (11) RCW 16.52.195 (Poisoning animals—Penalty) and 1941 c 105 s 3;
- (12) RCW 18.06.150 (Violations of RCW 18.06.130 or 18.06.140—Penalty) and 1985 c 326 s 15;
- (13) RCW 18.64.247 (Penalty for violation of RCW 18.64.245, 18.64.246) and 1939 c 28 s 3;
- (14) RCW 26.04.230 (Penalty for violation of marriage requirements) and 1992 c 7 s 30, 1909 ex.s. c 16 s 4, 1909 c 174 s 4, Code 1881 s 2394, & 1866 p 84 s 16;
- (15) RCW 28A.405.050 (Noncompliance with RCW 28A.405.040—Penalties) and 1991 c 115 s 1, 1990 c 33 s 385, & 1969 ex.s. c 223 s 28A.67.035;
- (16) RCW 28A.635.120 (Violations under RCW 28A.635.090 and 28A.635.100—Penalty) and 1990 c 33 s 543 & 1971 c 45 s 6;
- (17) RCW 28B.10.573 (Certain unlawful acts—Penalty) and 1970 ex.s. c 98 s 4;
- (18) RCW 28B.20.322 (Marine biological preserve—Gathering permit) and 1969 ex.s. c 223 s 28B.20.322;
- (19) RCW 28B.20.324 (Marine biological preserve—Penalty for unlawful gathering) and 1969 ex.s. c 223 s 28B.20.324;
- (20) RCW 28B.85.110 (Violations—Criminal sanctions) and 1986 c 136 s 11;
- (21) RCW 29.51.215 (Handicapped voters—Penalty) and 1981 c 34 s 2 & 1965 c 9 s 29.51.215;
- (22) RCW 33.24.380 (Acquisition of control of association—Penalty) and 1973 c 130 s 4;
- (23) RCW 36.28.070 (Duplicate to payer) and 1963 c 4 s 36.28.070;
- (24) RCW 36.28.080 (Original to be filed) and 1963 c 4 s 36.28.080;

- (25) RCW 36.28.140 (Penalty for violation of RCW 36.28.060 through 36.28.080) and 1963 c 4 s 36.28.140;
- (26) RCW 36.29.070 (Penalty for failure to call) and 1963 c 4 s 36.29.070;
- (27) RCW 36.32.215 (Inventory of county capitalized assets—Filing and public inspection) and 1995 c 194 s 6 & 1963 c 4 s 36.32.215;
- (28) RCW 36.32.220 (Inventory of county capitalized assets—Penalty) and 1963 c 4 s 36.32.220;
- (29) RCW 36.32.225 (Inventory of county capitalized assets—Prosecutions) and 1963 c 4 s 36.32.225;
- (30) RCW 36.32.230 (Inventory of county personal property—Taxpayer's action) and 1963 c 4 s 36.32.230;
- (31) RCW 36.75.140 (Approaches to county roads—Rules regarding construction) and 1969 ex.s. c 182 s 4 & 1963 c 4 s 36.75.140;
- (32) RCW 36.75.150 (Approaches to county roads—Penalty) and 1963 c 4 s 36.75.150;
- (33) RCW 43.01.110 (Penalty for violation of RCW 43.01.100) and 1965 c 8 s 43.01.110;
- (34) RCW 43.22.345 (Mobile homes, recreational or commercial vehicles—Penalty) and 1995 c 280 s 3 & 1969 ex.s. c 229 s 4;
- (35) RCW 47.36.210 (Signs or flaggers—Contractor compliance) and 1961 c 13 s 47.36.210;
- (36) RCW 47.36.220 (Signs or flaggers—Obedience by work vehicles) and 2000 c 239 s 8 & 1961 c 13 s 47.36.220;
- (37) RCW 47.36.230 (Signs or flaggers—Penalty) and 1961 c 13 s 47.36.230;
- (38) RCW 47.38.030 (Penalty) and 1993 c 116 s 2, 1979 ex.s. c 136 s 102, & 1967 ex.s. c 145 s 31;
- (39) RCW 48.30A.025 (Trafficking in insurance claims—Penalties) and 1995 c 285 s 5;
- (40) RCW 49.28.020 (Eight hour day, 1899 act—Public works contracts—Emergency overtime) and 1899 c 101 s 2;
- (41) RCW 49.28.030 (Eight hour day, 1899 act—Penalty) and 1899 c 101 s 3;
- (42) RCW 49.28.082 (Hours of domestic employees—Exception) and 1937 c 129 s 2;
- (43) RCW 49.28.084 (Hours of domestic employees—Penalty) and 1937 c 129 s 4;
- (44) RCW 49.28.110 (Hours of operators of power equipment in waterfront operations—Penalty) and 1953 c 271 s 2;
- (45) RCW 49.44.110 (Bringing in out of state persons to replace employees involved in labor dispute—Penalty) and 1961 c 180 s 2;
- (46) RCW 49.44.130 (Requiring lie detector tests—Criminal penalty) and 1985 c 426 s 2 & 1965 c 152 s 2;
- (47) RCW 61.12.031 (Removal of property from mortgaged premises—Penalty) and 1899 c 75 s 2;
- (48) RCW 64.36.230 (Criminal penalties) and 2002 c 86 s 303 & 1983 1st ex.s. c 22 s 22;
- (49) RCW 66.28.250 (Keg registration—Violation constitutes gross misdemeanor) and 1999 c 189 s 2;

(50) RCW 66.44.291 (Minor purchasing or attempting to purchase liquor—Penalty against persons between eighteen and twenty, inclusive) and 2002 c 175 s 42, 1987 c 101 s 1, & 1965 c 49 s 2;

(51) RCW 68.50.260 (Crematory record of caskets—Penalty) and 1943 c 247 s 58;

(52) RCW 69.90.040 (Violation of chapter is gross misdemeanor) and 1985 c 127 s 5;

(53) RCW 70.54.100 (Penalty for violation of RCW 70.54.090) and 1953 c 185 s 2;

(54) RCW 70.54.170 (Penalty for violation of RCW 70.54.160) and 1977 ex.s. c 97 s 2;

(55) RCW 70.110.060 (Penalties) and 1973 1st ex.s. c 211 s 6;

(56) RCW 70.111.050 (Penalty) and 1996 c 158 s 6;

(57) RCW 70.127.210 (Violation of RCW 70.127.020—Misdemeanor—Forfeiture of corporate charter—Fines) and 2000 c 175 s 18 & 1988 c 245 s 22;

(58) RCW 78.12.062 (Safety cage in mining shaft—Penalty) and 1890 p 123 s 8;

(59) RCW 81.40.030 (Penalty—Exceptions from requirements—Enforcement) and 1983 c 3 s 207 & 1961 c 14 s 81.40.030;

(60) RCW 81.40.050 (Enforcement) and 1961 c 14 s 81.40.050;

(61) RCW 81.40.070 (Penalty) and 1961 c 14 s 81.40.070;

(62) RCW 81.40.090 (Penalty) and 1961 c 14 s 81.40.090;

(63) RCW 81.40.120 (Cost of records or medical examinations—Definitions) and 1961 c 14 s 81.40.120;

(64) RCW 81.40.140 (Cost of records or medical examinations—Penalty) and 1961 c 14 s 81.40.140;

(65) RCW 81.60.090 (Receiving stolen railroad property) and 1961 c 14 s 81.60.090;

(66) RCW 81.64.100 ("Competent" defined) and 1961 c 14 s 81.64.100;

(67) RCW 81.64.110 (Penalty) and 1961 c 14 s 81.64.110; and

(68) RCW 81.64.170 (Penalty) and 1961 c 14 s 81.64.170.

NEW SECTION. Sec. 422. RCW 69.41.070, as amended by this act, is recodified within chapter 69.41 RCW under the subchapter heading "use of steroids."

NEW SECTION. Sec. 423. This act takes effect July 1, 2004.

Passed by the Senate March 16, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 54

[Substitute Senate Bill 5761]

INDUSTRIAL PROJECTS OF STATEWIDE SIGNIFICANCE

AN ACT Relating to industrial projects of statewide significance; and amending RCW 43.157.010, 43.157.020, 43.157.030, 43.42.050, and 43.42.060.

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

Sec. 1. RCW 43.157.010 and 1997 c 369 s 2 are each amended to read as follows:

(1) For purposes of this chapter and RCW 28A.525.166, 28B.80.330, 28C.18.080, 43.21A.350, 47.06.030, and 90.58.100 and ~~((f))~~ an industrial project of statewide significance is a border crossing project that involves both private and public investments carried out in conjunction with adjacent states or provinces or a private industrial development with private capital investment in manufacturing or research and development. To qualify as an industrial project of statewide significance((;): (a) The project must be completed after January 1, 1997((;); (b) the applicant must submit an application for designation as an industrial project of statewide significance to the department of community, trade, and economic development; and (c) the project must have:

~~((a))~~ (i) In counties with a population of less than or equal to twenty thousand, a capital investment of twenty million dollars;

~~((b))~~ (ii) In counties with a population of greater than twenty thousand but no more than fifty thousand, a capital investment of fifty million dollars;

~~((c))~~ (iii) In counties with a population of greater than fifty thousand but no more than one hundred thousand, a capital investment of one hundred million dollars;

~~((d))~~ (iv) In counties with a population of greater than one hundred thousand but no more than two hundred thousand, a capital investment of two hundred million dollars;

~~((e))~~ (v) In counties with a population of greater than two hundred thousand but no more than four hundred thousand, a capital investment of four hundred million dollars;

~~((f))~~ (vi) In counties with a population of greater than four hundred thousand but no more than one million, a capital investment of six hundred million dollars;

~~((g))~~ (vii) In counties with a population of greater than one million, a capital investment of one billion dollars; ~~((e~~

~~((h))~~ (viii) In counties with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th, projected full-time employment positions after completion of construction of fifty or greater;

(ix) In counties with one hundred or more persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th, projected full-time employment positions after completion of construction of one hundred or greater; or

(x) Been designated by the director of community, trade, and economic development as an industrial project of statewide significance either: ~~((+))~~ (A) Because the county in which the project is to be located is a distressed county and the economic circumstances of the county merit the additional assistance such designation will bring; or ~~((+))~~ (B) because the impact on a region due to the size and complexity of the project merits such designation.

(2) The term manufacturing shall have the meaning assigned it in RCW 82.61.010.

(3) The term research and development shall have the meaning assigned it in RCW 82.61.010.

(4) The term applicant means a person applying to the department of community, trade, and economic development for designation of a development project as an industrial project of statewide significance.

Sec. 2. RCW 43.157.020 and 1997 c 369 s 3 are each amended to read as follows:

~~Counties and cities ((planning under the planning enabling act, chapter 36.70 RCW, or the requirements of the growth management act, chapter 36.70A RCW, shall include a process, to be followed at their discretion for any specific project,)) with projects designated as industrial projects of statewide significance within their jurisdictions shall enter into an agreement with the office of permit assistance and the project managers of industrial projects of statewide significance for expediting the completion of industrial projects of statewide significance. The agreement shall require:~~

(1) Expedited permit processing for the design and construction of the project;

(2) Expedited environmental review processing;

(3) Expedited processing of requests for street, right of way, or easement vacations necessary for the construction of the project; and

(4) Such other items as are deemed necessary by the office of permit assistance for the design and construction of the project.

Sec. 3. RCW 43.157.030 and 1997 c 369 s 4 are each amended to read as follows:

(1) The department of community, trade, and economic development shall:

(a) Develop an application for designation of development projects as industrial projects of statewide significance. The application must be accompanied by a letter of approval from the legislative authority of any jurisdiction that will have the proposed industrial project of statewide significance within its boundaries. No designation of a project as an industrial project of statewide significance shall be made without such letter of approval. The letter of approval must state that the jurisdiction joins in the request for the designation of the project as one of statewide significance and has or will hire the professional staff that will be required to expedite the processes necessary to the completion of an industrial project of statewide significance. The application shall contain information regarding the location of the project, the applicant's average employment in the state for the prior year, estimated new employment related to the project, estimated wages of employees related to the project, estimated time schedules for completion and operation, and other information required by the department; and

(b) Certify that the project meets or will meet the requirements of RCW 43.157.010 regarding designation as an industrial project of statewide significance.

(2) The office of permit assistance shall assign ((an ombudsman)) a project facilitator or coordinator to each industrial project of statewide significance((-The ombudsman shall be responsible for assembling)) to: (a) Assist in the scoping and coordinating functions provided for in chapter 43.42 RCW; (b) assemble a team of state and local government and private officials to help meet

the planning, permitting, and development needs of each project(~~(—The ombudsman shall strive to include in the teams)~~), which team shall include those responsible for planning, permitting and licensing, infrastructure development, work force development services including higher education, transportation services, and the provision of utilities(~~(—The ombudsman shall encourage)~~); and (c) work with each team member to expedite their actions in furtherance of the project.

Sec. 4. RCW 43.42.050 and 2002 c 153 s 6 are each amended to read as follows:

At the request of a project applicant, the office shall assist the project applicant in determining what regulatory requirements, processes, and permits apply to the project, as provided in this section.

(1) The office shall assign a project facilitator who shall discuss applicable regulatory requirements, permits, and processes with the project applicant and explain the available options for obtaining required permits.

(2) If the project applicant and the project facilitator agree that the project would benefit from a project scoping, or if the project is an industrial project of statewide significance, as defined in RCW 43.157.010, the project facilitator shall conduct a project scoping by the project applicant and the relevant state and local permit agencies. The project facilitator shall invite the participation of the relevant federal permit agencies and tribal governments.

(a) The purpose of the project scoping is to identify the issues and information needs of the project applicant and the participating permit agencies regarding the project, share perspectives, and jointly develop a strategy for the processing of required permits by each participating permit agency.

(b) The scoping shall address:

(i) The permits that are required for the project;

(ii) The permit application forms and other application requirements of the participating permit agencies;

(iii) The specific information needs and issues of concern of each participant and their significance;

(iv) Any statutory or regulatory conflicts that might arise from the differing authorities and roles of the permit agencies;

(v) Any natural resources, including federal or state listed species, that might be adversely affected by the project and might cause an alteration of the project or require mitigation; and

(vi) The anticipated time required for permit decisions by each participating permit agency, including the time required to determine if the permit application is complete, to conduct environmental review, and to review and process the application. In determining the time required, full consideration must be given to achieving the greatest possible efficiencies through any concurrent studies and any consolidated applications, hearings, and comment periods.

(c) The outcome of the project scoping shall be documented in writing, furnished to the project applicant, and be made available to the public.

(d) The project scoping shall be completed within sixty days of the project applicant's request for a project scoping.

(e) Upon completion of the project scoping, the participating permit agencies shall proceed under their respective authority. The agencies are

encouraged to remain in communication for purposes of coordination until their final permit decisions are made.

(3) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

Sec. 5. RCW 43.42.060 and 2002 c 153 s 7 are each amended to read as follows:

(1) The office may coordinate the processing by participating permit agencies of permits required for a project, at the request of the project applicant through a cost reimbursement agreement as provided in subsection (3) of this section or with the agreement of the project applicant as provided in subsection (4) of this section.

(2) The office shall assign a project coordinator to perform any or all of the following functions, as specified by the terms of a cost reimbursement agreement under subsection (3) of this section or an agreement under subsection (4) of this section:

(a) Serve as the main point of contact for the project applicant;

(b) Conduct a project scoping as provided in RCW 43.42.050(2);

(c) Verify that the project applicant has all the information needed to complete applications;

(d) Coordinate the permit processes of the permit agencies;

(e) Manage the applicable administrative procedures;

(f) Work to assure that timely permit decisions are made by the permit agencies and maintain contact with the project applicant and the permit agencies to ensure adherence to schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions; and

(h) Coordinate with relevant federal permit agencies and tribal governments to the extent possible.

(3) At the request of a project applicant and as provided in RCW 43.42.070, the project coordinator shall coordinate negotiations among the project applicant, the office, and participating permit agencies to enter into a cost reimbursement agreement and shall coordinate implementation of the agreement, which shall govern coordination of permit processing by the participating permit agencies.

(4) (~~The office may determine~~) For industrial projects of statewide significance or if the office determines that it is in the public interest to coordinate the processing of permits for certain projects that are complex in scope, require multiple permits, involve multiple jurisdictions, or involve a significant number of affected parties(~~—Upon such a determination, the office may~~), the office shall, upon the applicant's request, enter into an agreement with the project applicant and the participating permit agencies to coordinate the processing of permits for the project. The office may limit the number of such agreements according to the resources available to the office and the permit agencies at the time.

Passed by the Senate March 11, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 55

[Senate Bill 5937]

SCENIC AND RECREATIONAL HIGHWAY SYSTEM

AN ACT Relating to additions to the scenic and recreational highway system; and amending RCW 47.39.020.

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

Sec. 1. RCW 47.39.020 and 1993 c 430 s 7 are each amended to read as follows:

The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also

Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;

(2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

(5) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

(6) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(7) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

(8) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(9) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

(10) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(11) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(12) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

(13) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(14) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

(15) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(16) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

(17) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Tekoa.

(18) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

((47)) (19) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

((48)) (20) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

((49)) (21) State route number 97, beginning at the Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

~~((20))~~ (22) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

~~((21))~~ (23) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

~~((22))~~ (24) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

~~((23))~~ (25) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

~~((24))~~ (26) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

~~((25))~~ (27) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

~~((26))~~ (28) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

~~((27))~~ (29) State route number 119, beginning at the junction with state route number 101 at Hoodspport, thence northwesterly to the Mount Rose development intersection;

~~((28))~~ (30) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

~~((29))~~ (31) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

~~((30))~~ (32) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

~~((31))~~ (33) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

~~((32))~~ (34) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

~~((33))~~ (35) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

~~((34))~~ (36) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

~~((35))~~ (37) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

~~((36))~~ (38) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line.

(39) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

~~((37))~~ (40) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

~~((38))~~ (41) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak.

(42) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

~~((39))~~ (43) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

~~((40))~~ (44) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

~~((41))~~ (45) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia.

(46) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

~~((42))~~ (47) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

~~((43))~~ (48) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

~~((44))~~ (49) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

~~((45))~~ (50) State route number 410, beginning 4.0 miles east of Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;

~~((46))~~ (51) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

~~((47))~~ (52) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

~~((48))~~ (53) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

~~((49))~~ (54) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

~~((50))~~ (55) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

~~((51))~~ (56) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

~~((52))~~ (57) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

~~((53))~~ (58) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

~~((54))~~ (59) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

~~((53))~~ (60) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

~~((56))~~ (61) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road.

Passed by the Senate March 12, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 56

[Engrossed Senate Bill 5938]

VESSELS—FINANCIAL RESPONSIBILITY

AN ACT Relating to financial responsibility requirements for vessels; amending RCW 88.40.011, 88.40.020, and 88.40.040; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that the current financial responsibility laws for vessels are in need of update and revision. The legislature intends that, whenever possible, the standards set for Washington state provide the highest level of protection consistent with other western states and to ultimately achieve a more uniform system of financial responsibility on the Pacific Coast.

Sec. 2. RCW 88.40.011 and 2000 c 69 s 30 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

~~(1)~~ "Barge" means a vessel that is not self-propelled.

~~(2)~~ "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons (~~(, including but not limited to, commercial fish processing vessels and freighters)).~~

~~((2))~~ (3) "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.

~~((3))~~ (4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

~~((4))~~ (5) "Department" means the department of ecology.

~~((5))~~ (6) "Director" means the director of the department of ecology.

~~((6))~~ (7)(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))~~ any vessel with an oil carrying capacity over two hundred fifty barrels 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.

~~((7))~~ (8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, 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.

~~((8))~~ "Inland barge" means any barge operating on the waters of the state and certified by the coast guard as an inland barge.

~~(9))~~ (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.

~~((10))~~ (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 as of March 1, 2003, 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.

~~((11))~~ (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.

~~((12))~~ (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.

~~((12))~~ (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.

~~((14))~~ (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.

~~((15))~~ (17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((16))~~ (18) "Spill" means an unauthorized discharge of oil into the waters of the state.

~~((17))~~ (19) "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.

~~((18))~~ (20) "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. 3. RCW 88.40.020 and 2000 c 69 s 31 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))~~ five million dollars, or ~~((one))~~ three hundred ~~((fifty))~~ dollars per gross ton of such vessel.

(2)(a) Except as provided in (b) or (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. The amount of financial responsibility required under this subsection is one billion dollars after January 1, 2004.

(b) The director by rule may establish a lesser standard of financial responsibility for ~~((barges))~~ tank vessels of three hundred gross tons or less. The

standard shall set the level of financial responsibility based on the quantity of cargo the ~~((barge))~~ tank vessel is capable of carrying. The director shall not set the standard for ~~((barges))~~ tank vessels 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 director may require the owner or operator of a tank vessel to prove membership in such an organization.

(3)~~(a)~~ 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))~~ at least three hundred million dollars.

(b) The owner or operator of a cargo vessel or passenger 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 director may require the owner or operator of a cargo vessel or passenger vessel to prove membership in such an organization.

(4) A fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts: (a) For a fishing vessel carrying predominantly nonpersistent product, one hundred thirty-three dollars and forty cents per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or one million three hundred thirty-four thousand dollars, whichever is greater; or (b) for a fishing vessel carrying predominantly persistent product, four hundred dollars and twenty cents per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or six million six hundred seventy thousand dollars, whichever is greater.

(5) 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 for necessary expenses.

~~((5) The 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 department. The 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. 4. RCW 88.40.040 and 2000 c 69 s 33 are each amended to read as follows:

(1) ((The department shall deny entry to the waters of the state to any vessel that does not meet the financial responsibility requirements of this chapter)) It is unlawful for any vessel required to have financial responsibility under this chapter to enter or operate on Washington waters without meeting the requirements of this chapter or rules adopted under this chapter, except when necessary to avoid injury to the vessel's crew or passengers. 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 department to the United States coast guard.

(2) The department shall enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act.

Passed by the Senate March 17, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 57

[Substitute Senate Bill 5966]

DENTISTS—LICENSING

AN ACT Relating to increasing the supply of dentists to meet the critical shortage of dental providers in this state and underserved areas; amending RCW 18.32.215; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds and declares that access to dental care is severely hampered by a critical and emergent shortage of dental providers in Washington state. Dental disease is an epidemic among poor children, the elderly, the disabled, and anyone who does not have access to adequate dental care. Dental decay is worsening among children under four years of age, with forty-one percent of the state's Headstart children needing treatment for dental decay. The lack of qualified dentists poses a serious and compelling threat to the oral health of the people of this state.

Shortages are also due to licensing restrictions that have discouraged qualified dentists from coming into this state. Increasing the number of dentists from other states and from military service would enable retiring dentists in this state to sell their practices to other qualified practitioners.

Sec. 2. RCW 18.32.215 and 1994 sp.s. c 9 s 219 are each amended to read as follows:

An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the ~~((commission determines that the other state's licensing standards are substantively equivalent to the standards in this state))~~ applicant is a graduate of a dental college, school, or dental department of an institution approved by the commission under RCW 18.32.040(1). The commission may also require the applicant to: (1) File with the commission documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the commission deems necessary pertaining to the conditions and criteria of the Uniform Disciplinary Act, chapter 18.130 RCW, and to demonstrate to the commission a knowledge of Washington law pertaining to the practice of dentistry.

Passed by the Senate March 16, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 58

[Senate Bill 5989]

BOARD OF PILOTAGE COMMISSIONERS—MEMBERSHIP

AN ACT Relating to pilot members of the board of pilotage commissioners; and amending RCW 88.16.010.

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

Sec. 1. RCW 88.16.010 and 2001 c 36 s 4 are each amended to read as follows:

(1) The board of pilotage commissioners of the state of Washington is hereby created and shall consist of the assistant secretary of marine transportation of the department of transportation of the state of Washington, or the assistant secretary's designee who shall be an employee of the marine division, who shall be chairperson, the director of the department of ecology, or the director's designee, and seven members appointed by the governor and confirmed by the senate. Each of the appointed commissioners shall be appointed for a term of four years from the date of the member's commission. No person shall be eligible for appointment to the board unless that person is at the time of appointment eighteen years of age or over and a citizen of the United States and of the state of Washington. Two of the appointed commissioners shall be pilots licensed under this chapter and actively engaged in piloting upon the waters covered by this chapter for at least three years immediately preceding the time of appointment and while serving on the board. One pilot shall be from the Puget Sound pilotage district and ~~((one))~~ the other pilot shall be from either the Grays Harbor pilotage district or the Puget Sound pilotage district. Two of the appointed commissioners shall be actively engaged in the ownership, operation, or management of deep sea cargo and/or passenger carrying vessels for at least three years immediately preceding the time of appointment and while serving on the board. One of ~~((said))~~ the shipping commissioners shall be a representative of American and one of foreign shipping. One of the commissioners shall be a representative from a recognized environmental organization concerned with marine waters. The remaining commissioners shall be persons interested in and concerned with pilotage, maritime safety, and marine affairs, with broad experience related to the maritime industry exclusive of experience as either a state licensed pilot or as a shipping representative.

(2) Any vacancy in an appointed position on the board shall be filled by the governor for the remainder of the unfilled term, subject to confirmation by the senate.

(3) Five members of the board shall constitute a quorum. At least one pilot, one shipping representative, and one public member must be present at every meeting. All commissioners and the chairperson shall have a vote.

Passed by the Senate March 17, 2003.

Passed by the House April 9, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.

CHAPTER 59

[Senate Bill 5994]

WINE SUPPLIERS AND DISTRIBUTORS

AN ACT Relating to removing suppliers and distributors of wine from the provisions of chapter 19.126 RCW; amending RCW 19.126.010 and 19.126.020; and declaring an emergency.

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

Sec. 1. RCW 19.126.010 and 1984 c 169 s 1 are each amended to read as follows:

(1) The legislature recognizes that both suppliers and wholesale distributors of malt beverages (~~(and wine)~~) are interested in the goal of best serving the public interest through the fair, efficient, and competitive distribution of such beverages. The legislature encourages them to achieve this goal by:

(a) Assuring the wholesale distributor's freedom to manage the business enterprise, including the wholesale distributor's right to independently establish its selling prices; and

(b) Assuring the supplier and the public of service from wholesale distributors who will devote their best competitive efforts and resources to sales and distribution of the supplier's products which the wholesale distributor has been granted the right to sell and distribute.

(2) This chapter governs the relationship between suppliers of malt beverages (~~(and wine)~~) and their wholesale distributors to the full extent consistent with the Constitution and laws of this state and of the United States.

Sec. 2. RCW 19.126.020 and 1997 c 321 s 41 are each amended to read as follows:

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

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and distributor.

(2) "Distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage (~~(or wine)~~) for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage (~~(or wine)~~) manufacturer.

(3) "Supplier" means any malt beverage (~~(or wine)~~) manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) ~~((Any domestic winery licensed pursuant to RCW 66.24.170; (b) any winery or manufacturer of wine producing less than three hundred thousand gallons of wine annually and holding a certificate of approval issued pursuant to RCW 66.24.206; (e)))~~ Any domestic brewer or microbrewer licensed under RCW 66.24.240 and producing less than fifty thousand barrels of malt liquor annually; or ~~((d))~~ (b) any brewer or manufacturer of malt liquor producing less than fifty thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270.

(4) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

~~(5) ("Wine manufacturer" means every winery, processor, bottler, or packager of wine located within or outside this state, or any other person, whether located within or outside this state who enters into an agreement of distributorship for the resale of wine in this state with any wine wholesale distributor doing business in the state of Washington.~~

~~(6))~~ "Importer" means any distributor importing beer ~~((or wine))~~ into this state for sale to retailer accounts or for sale to other wholesalers designated as "subjobbers" for resale.

~~((7))~~ (6) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity.

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 by the Senate March 16, 2003.
Passed by the House April 8, 2003.
Approved by the Governor April 17, 2003.
Filed in Office of Secretary of State April 17, 2003.

CHAPTER 60

[House Bill 1045]

WATER-SEWER DISTRICTS—CONTRACTS

AN ACT Relating to water-sewer district bidding provisions; and amending RCW 57.08.050.

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

Sec. I. RCW 57.08.050 and 2000 c 138 s 212 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 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.

(4) As an alternative to requirements under subsection (3) of this section, a water-sewer district may let contracts for purchase of materials, supplies, or equipment with the suppliers designated on current state agency, county, city, or town purchasing rosters for the materials, supplies, or equipment, when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city, or town. The price and terms for purchases shall be as described on the applicable roster.

(5) 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.

Passed by the House February 12, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 61

[Substitute House Bill 1086]

MOBILE HOMES OR PARK MODEL TRAILERS—MOVING PERMITS

AN ACT Relating to moving permits for owners of mobile home parks; and amending RCW 46.44.170.

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

Sec. 1. RCW 46.44.170 and 2002 c 168 s 6 are each amended to read as follows:

(1) Any person moving a mobile home as defined in RCW 46.04.302 or a park model trailer as defined in RCW 46.04.622 upon public highways of the state must obtain a special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and shall pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home or a park model (~~((trailer))~~) trailer that is assessed for purposes of property taxes shall not be valid until the county treasurer of the county in which the mobile home or park model trailer is located shall endorse or attach (~~((thereto))~~) his or her certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home or park model trailer being moved have been satisfied. Further, any mobile home or park model trailer required to have a special movement permit under this section shall display an easily recognizable decal (~~((:—PROVIDED, That))~~). However, endorsement or certification by the county treasurer and the display of ((said)) the decal is not required;

(a) When a mobile home or park model trailer is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets; or

(b) When a signed affidavit of destruction is filed with the county assessor and the mobile home or park model trailer is being moved to a disposal site by a landlord as defined in RCW 59.20.030 after (i) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer. The mobile home or park model trailer will be removed from the tax rolls and, upon notification by the assessor, any outstanding taxes on the destroyed mobile home will be removed by the county treasurer.

(3) If the landlord of a mobile home park takes ownership of a mobile home or park model trailer with the intent to resell or rent the same under RCW 59.20.030 after (a) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer, the outstanding taxes become the responsibility of the landlord.

(4) It ((shall be)) is the responsibility of the owner of the mobile home or park model trailer subject to property taxes or the agent to obtain ((such)) the endorsement and decal from the county treasurer (~~((and said decal))~~) before a mobile home or park model trailer is moved.

~~((3) Nothing herein should be construed as prohibiting)~~ (5) This section does not prohibit the issuance of vehicle license plates for a mobile home or park model trailer subject to property taxes, but ~~((no such))~~ plates shall not be issued unless the mobile home or park model trailer subject to property taxes for which ~~((such))~~ plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for ~~((such))~~ the license has been paid.

~~((4))~~ (6) The department of transportation and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation shall adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section.

Passed by the House February 24, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 62

[House Bill 1110]

VOLUNTEER FIRE FIGHTERS—PENSIONS

AN ACT Relating to monthly pensions for volunteer fire fighters and reserve officers; amending RCW 41.24.185; reenacting and amending RCW 41.24.170; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 41.24.170 and 1999 c 148 s 15 and 1999 c 117 s 4 are each reenacted and amended to read as follows:

Except as provided in RCW 41.24.410, whenever any participant has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized fire department or law enforcement agency of any municipality in this state, and which municipality has adopted appropriate legislation allowing its fire fighters or reserve officers to enroll in the retirement pension provisions of this chapter, and the participant has enrolled under the retirement pension provisions and has reached the age of sixty-five years, the board of trustees shall order and direct that he or she be retired and be paid a monthly pension from the principal fund as provided in this section.

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

Whenever any participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and the participant has reached the age of sixty-five

years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such participant shall receive a minimum monthly pension of ~~((thirty))~~ fifty dollars increased by the sum of ten dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension provided in this section, for the balance of the participant's life.

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

(1) Any participant, who is older than fifty-nine years of age, less than sixty-five years of age, and has completed twenty-five years or more of service may irrevocably elect a reduced monthly pension in lieu of the pension that participant would be entitled to under this section at age sixty-five. The participant who elects this option shall receive the reduced pension for the balance of his or her life. The reduced monthly pension is calculated as a percentage of the pension the participant would be entitled to at age sixty-five. The percentage used in the calculation is based upon the age of the participant at the time of retirement as follows:

Age 60	Sixty percent
Age 61	Sixty-eight percent
Age 62	Seventy-six percent
Age 63	Eighty-four percent
Age 64	Ninety-two percent

(2) If a participant is age sixty-five or older but has less than twenty-five years of service, the participant is entitled to a reduced benefit. The reduced benefit shall be computed as follows:

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

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

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

(3) If a participant with less than twenty-five years of service elects to retire after turning age sixty but before turning age sixty-five, the participant's retirement allowance is subject:

(a) First to the reduction under subsection (2) of this section based upon the participant's years of service; and

(b) Second to the reduction under subsection (1) of this section based upon the participant's age.

Sec. 2. RCW 41.24.185 and 1989 c 91 s 7 are each amended to read as follows:

Any monthly pension, payable under this chapter, which will not amount to ~~((twenty-five))~~ fifty dollars may be converted into a lump sum payment equal to the actuarial equivalent of the monthly pension. The conversion may be made either upon written application to the state board and shall rest at the discretion of the state board; or the state board may make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due. Any person receiving a monthly payment of less than twenty-five dollars at the time of September 1, 1979, may elect, within two years, to convert such payments into a lump sum payment as ~~((herein))~~ provided in this section.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the House February 28, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 63

[Second Substitute House Bill 1241]

BIODIESEL AND ALCOHOL FUELS—TAX INCENTIVES

AN ACT Relating to tax incentives for the distribution and retail sale of biodiesel and alcohol fuels; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; providing an effective date; 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 82.04 RCW to read as follows:

(1) In computing tax there may be deducted from the measure of tax amounts received from the retail sale, or for the distribution, of:

(a) Biodiesel fuel; or

(b) Alcohol fuel, if the alcohol fuel is at least eighty-five percent of the volume of the fuel being sold or distributed.

(2) For the purposes of this act, the following definitions apply:

(a) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(b) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements and machines, or implements of husbandry.

(c) "Distribution" means any of the actions specified in RCW 82.36.020(2).

(3) This section expires July 1, 2009.

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, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or to sales of tangible personal property that becomes an ingredient or component of structures or machinery and equipment, if the machinery, equipment, or structure is used directly for the retail sale of a biodiesel or alcohol fuel blend. Structures and machinery and equipment that are used for the retail sale of a biodiesel or alcohol fuel blend and for other purposes are exempt only on the portion used directly for the retail sale of a biodiesel or alcohol fuel blend.

(2) The tax levied by RCW 82.08.020 does not apply to sales of fuel delivery vehicles or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles including repair parts and replacement parts if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel or alcohol fuel blend.

(3) 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.

(4) For the purposes of this section, the definitions in section 1 of this act and this subsection apply.

(a) "Alcohol fuel blend" means fuel that contains at least eighty-five percent alcohol fuel by volume.

(b) "Biodiesel blend" means fuel that contains at least twenty percent biodiesel fuel by volume.

(c) "Machinery and equipment" means industrial fixtures, devices, and support facilities and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts that are integral and necessary for the delivery of biodiesel or alcohol fuel blends into the fuel tank of a motor vehicle.

(5) This section expires July 1, 2009.

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 to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, or tangible personal property that becomes an ingredient or component of machinery and equipment used directly for the retail sale of a biodiesel or alcohol fuel blend.

(2) The provisions of this chapter do not apply in respect to the use of fuel delivery vehicles including repair parts and replacement parts and to services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel or alcohol fuel blend.

(3) For the purposes of this section, the definitions in sections 1 and 2 of this act apply.

(4) This section expires July 1, 2009.

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 July 1, 2003.

Passed by the House March 11, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 64

[Engrossed Substitute House Bill 1243]

BIODIESEL PILOT PROJECT

AN ACT Relating to a biodiesel pilot project; adding new sections to chapter 28A.160 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. A new section is added to chapter 28A.160 RCW to read as follows:

The legislature recognizes that:

(1) The use of motor vehicles has a significant impact on the environment and public health of the state of Washington. Motor vehicles account for more than half of all air pollutants, almost sixty percent of total carbon dioxide emissions, and a significant portion of toxic contaminants in Washington state;

(2) Diesel exhaust, in particular, is likely to cause lung cancer in humans, chronic and acute bronchitis, asthma attacks, and respiratory illnesses. Children are particularly at risk. One out of every ten children in our state suffers from asthma. Over four hundred thousand students in the state risk their health breathing exhaust from riding diesel-powered buses to school every day;

(3) Although stringent standards established by the United States environmental protection agency for new diesel engine technology will take effect with the 2007 model year, a significant majority of diesel-powered school buses now in use in the state will continue to be used for the next thirteen or more years;

(4) Using biodiesel in place of, or blended with, petroleum diesel reduces emissions of carbon monoxide, hydrocarbon, particulates, and air toxics from new or existing diesel engines;

(5) Using ultra low sulfur diesel, along with after-market emissions control devices, significantly reduces fine-particle, hydrocarbon, and nitrogen oxide emissions from existing diesel engines;

(6) The United States environmental protection agency's new emission standards requiring the use of ultra low sulfur diesel take effect June 1, 2006, and ultra low sulfur diesel requires the addition of a lubricant to counteract premature wear of injection pumps;

(7) Biodiesel provides the needed lubricity to ultra low sulfur diesel, in addition to reducing harmful emissions;

(8) It is the intent of the legislature to study the effects of using ultra low sulfur diesel with biodiesel.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.160 RCW to read as follows:

The superintendent of public instruction shall conduct a pilot project on the use of biodiesel with ultra low sulfur diesel in school buses powered by compression-ignition engines. The pilot project must begin in September of 2003.

(1) The superintendent of public instruction shall select two school districts to participate in the project. School districts located in a geographic area listed by the environmental protection agency as an area of concern for pollution emissions must receive first consideration for the project.

(2) The pilot project shall meet the following requirements:

(a) During the 2003 school year, at least one of the participating school districts shall have at least twenty-five percent of the school bus fleet, or a total of not less than ten buses, fueled with ultra low sulfur diesel. Emissions testing must be conducted before using ultra low sulfur diesel, and again after ultra low sulfur diesel has been in use for at least six months.

(b) During the 2004 school year, not less than seventy percent, or a total of not less than seven, of the buses fueled with ultra low sulfur diesel during the 2003 school year must be fueled with a blend of eighty percent ultra low sulfur diesel, by volume, and twenty percent biodiesel, by volume. Emissions testing must be conducted not less than six months after adding biodiesel to the ultra low sulfur diesel.

(c) A maximum of one of the participating school districts may, for the duration of the project, use a blend of twenty percent biodiesel, by volume, with eighty percent highway diesel, by volume, in at least seventy-five percent of the school bus fleet, or a total of not less than ten buses. Emissions testing must be conducted before use of the biodiesel blend, again not less than six months after the biodiesel blend has been in use, and again at the conclusion of the project.

(d) Issues related to the maintenance, including but not limited to fuel economy, changes in fuel filters, and other maintenance issues related to the use of ultra low sulfur diesel and biodiesel must be recorded.

(3) The superintendent of public instruction shall submit a report of findings to the legislature by September 1, 2005.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.160 RCW to read as follows:

The definitions in this section apply throughout sections 1 and 2 of this act unless the context clearly requires otherwise.

(1) "Biodiesel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(2) "Ultra low sulfur diesel" means petroleum diesel in which the sulfur content is not more than thirty parts per million.

(3) "Highway diesel" means petroleum diesel in which the sulfur content is not more than five hundred parts per million.

NEW SECTION. Sec. 4. It is the intent of the legislature that implementation of this pilot project will not produce a significant financial burden on participating school districts or the state. The legislature calls upon the superintendent of public instruction, the office of community, trade, and economic development, and the department of ecology to explore alternative

means of funding this pilot project including the use of state or federal grants but excluding the use of money from the state general fund. In the event of the inability of the participating school districts to fund this project, either from their own operating budget, grants, or other local funding or a combination thereof, the implementation of this act shall be dependent on securing funds that are not from the state general fund.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act expire September 1, 2005.

Passed by the House March 11, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 65

[House Bill 1318]

FOOD SERVICE RULES—FOOD CODE

AN ACT Relating to referencing the United States food and drug administration's food code; adding a new section to chapter 43.20 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The United States food and drug administration's food code incorporates the most recent food science and technology. The code is regularly updated in consultation with the states, the scientific community, and the food service industry. The food and drug administration's food code provides consistency for food service regulations, and it serves as a model for many states' food service rules. It is the legislature's intent that the state board of health use the United States food and drug administration's food code as guidance when developing food service rules for this state.

NEW SECTION. Sec. 2. A new section is added to chapter 43.20 RCW to read as follows:

The state board shall consider the most recent version of the United States food and drug administration's food code for the purpose of adopting rules for food service.

Passed by the House February 28, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 66

[Substitute House Bill 1346]

VACATION OF RECORDS OF CONVICTION

AN ACT Relating to vacation of records of conviction for pre-sentencing reform act felony offenses; and amending RCW 9.95.240 and 9.92.066.

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

Sec. 1. RCW 9.95.240 and 1957 c 227 s 7 are each amended to read as follows:

(1) Every defendant who has fulfilled the conditions of his or her probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he or she has been convicted be permitted in the discretion of the court to withdraw his or her plea of guilty and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted. The probationer shall be informed of this right in his or her probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.

(2)(a) After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may in its discretion clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

Sec. 2. RCW 9.92.066 and 1971 ex.s. c 188 s 3 are each amended to read as follows:

(1) Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his or her civil rights. Thereupon the court may in its discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted.

(2)(a) Upon termination of a suspended sentence under RCW 9.92.060 or 9.95.210, the person may apply to the sentencing court for a vacation of the person's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the person has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately

update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

Passed by the House March 13, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 67

[House Bill 1348]

TECHNICAL CORRECTIONS—MOBILE AND MANUFACTURED HOMES

AN ACT Relating to technical corrections concerning manufactured and mobile homes under the authority of RCW 1.08.025; amending 2002 c 268 s 10 (uncodified); and reenacting and amending RCW 43.22.434.

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

Sec. 1. RCW 43.22.434 and 2002 c 268 s 3 and 2002 c 268 s 2 are each reenacted and amended to read as follows:

(1) The director or the director's authorized representative may conduct such inspections, investigations, and audits as may be necessary to adopt or enforce manufactured and mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, park trailer, factory built housing, and factory built commercial structure rules adopted under the authority of this chapter or to carry out the director's duties under this chapter.

(2) For purposes of enforcement of this chapter, persons duly designated by the director upon presenting appropriate credentials to the owner, operator, or agent in charge may:

(a) At reasonable times and without advance notice enter any factory, warehouse, or establishment in which manufactured and mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, park trailers, factory built housing, and factory built commercial structures are manufactured, stored, or held for sale;

(b) At reasonable times, within reasonable limits, and in a reasonable manner inspect any factory, warehouse, or establishment as required to comply with the standards adopted by the secretary of housing and urban development under the national manufactured home construction and safety standards act of 1974. Each inspection shall be commenced and completed with reasonable promptness; and

(c) As requested by an owner of a conversion vending unit or medical unit, inspect an alteration.

(3) For purposes of determining compliance with this chapter's permitting requirements for alterations of mobile and manufactured homes, the department may audit the records of a contractor as defined in chapter 18.27 RCW or RCW 18.106.020(1) or an electrical contractor as defined in RCW 19.28.006 when the department has reason to believe that a violation of the permitting requirements has occurred. The department shall adopt rules implementing the auditing procedures. Information obtained from a contractor through an audit authorized

by this subsection is confidential and not open to public inspection under chapter 42.17 RCW.

(4)(a) The department shall set a schedule of fees by rule which will cover the costs incurred by the department in the administration of RCW 43.22.335 through 43.22.490.

(b)(i) ~~Until April 1, 2004,~~ subject to (a) of this subsection, and for the purposes of implementing the pilot project approved by the mobile/manufactured home alteration task force, the department may adopt by rule a temporary statewide fee schedule that decreases fees for mobile/manufactured home alteration permits and increases fees for factory-built housing and commercial structures plan review and inspection services. Under the temporary fee schedule, the department may waive mobile/manufactured home alteration permit fees for indigent permit applicants. The department may increase fees for factory-built housing and commercial structures plan review and inspection services in excess of the fiscal growth factor under chapter 43.135 RCW, if the increases are necessary to fund the cost of administering RCW 43.22.335 through 43.22.490. In no instance shall any fee that applies to the factory-built housing and commercial plan review and inspection services be increased in excess of forty percent.

(ii) Effective April 1, 2004, the department must adopt a new fee schedule that is the same as the fee schedule that was in effect immediately prior to the temporary fee schedule authorized in ~~((section 2(4)(b), chapter 268, Laws of 2002))~~ **(b)(i) of this subsection**. However, the new fee schedule must be adjusted by the fiscal growth factors not applied during the period that the temporary fee schedule was in effect.

~~((5) This section expires April 1, 2004.))~~

Sec. 2. 2002 c 268 s 10 (uncodified) is amended to read as follows:

~~((1))~~ Sections 1, 2, and 4 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

~~((2) Section 3 of this act takes effect April 1, 2004.))~~

EXPLANATORY NOTE

RCW 43.22.434 was amended twice by chapter 268, Laws of 2002. Both versions added identical language as a new subsection (3). One version added a new subsection (4) and expired the entire RCW April 1, 2004, in a new subsection (5). The other version also added a new subsection (4), with provisions effective April 1, 2004. The purpose of this bill is to retain the RCW and allow for certain of its provisions to be effective until April 1, 2004, and other of its provisions to be given effect April 1, 2004.

Passed by the House February 28, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 68

[House Bill 1460]

CIVIL LIBERTIES DAY OF REMEMBRANCE

AN ACT Relating to a Washington state day of remembrance; amending RCW 1.16.050; and adding a new section to chapter 1.16 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 1.16 RCW to read as follows:

The legislature recognizes that on February 19, 1942, the President of the United States issued Executive Order 9066 which authorized military rule over civilian law and lives; that Executive Order 9066 led to the World War II evacuation and internment of more than one hundred twenty thousand Japanese Americans, most of whom were United States citizens by birth; that Japanese Americans lost their homes and livelihoods and suffered physical and psychological damage; and that, despite widespread hostility and discrimination, Japanese Americans served with distinction in the United States military effort as members of the Military Intelligence Service and in the segregated 100th Infantry Battalion and the 442nd Regimental Combat Team. The legislature further recognizes that in the name of "military necessity," Japanese Americans were deprived of their fundamental constitutional rights and civil liberties; and that the Japanese American experience during World War II tragically illuminates the fragile nature of our most cherished national beliefs and values.

The legislature declares that an annual day of recognition be observed in remembrance of Japanese Americans interned during World War II as a reminder that, regardless of the provocation, individual rights and freedoms must never be denied.

Sec. 2. RCW 1.16.050 and 2000 c 60 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.

The legislature declares that the nineteenth day of February be recognized as civil liberties day of remembrance but shall not be considered a legal holiday for any purpose.

Passed by the House March 12, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 69

[Engrossed Substitute House Bill 1462]

INTELLECTUAL PROPERTY—LOCAL GOVERNMENT TAXATION

AN ACT Relating to local government business and occupation tax on intellectual property; and adding a new section to chapter 35.21 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.21 RCW to read as follows:

(1) A city may not impose a gross receipts tax on intellectual property creating activities.

(2) A city may impose a gross receipts tax measured by gross receipts from royalties only on taxpayers domiciled in the city. For the purposes of this section, "royalties" does not include gross receipts from casual or isolated sales as defined in RCW 82.04.040, grants, capital contributions, donations, or endowments.

(3) This section does not prohibit a city from imposing a gross receipts tax measured by the value of products manufactured in the city merely because intellectual property creating activities are involved in the design or manufacturing of the products. An intellectual property creating activity shall not constitute an activity defined within the meaning of the term "to manufacture" under chapter 82.04 RCW.

(4) This section does not prohibit a city from imposing a gross receipts tax measured by the gross proceeds of sales made in the city merely because intellectual property creating activities are involved in creation of the articles sold.

(5) This section does not prohibit a city from imposing a gross receipts tax measured by the gross income received for services rendered in the city merely because intellectual property creating activities are some part of services rendered.

(6) A tax in effect on January 1, 2002, is not subject to this section until January 1, 2004.

(7) The definitions in this subsection apply to this section.

(a) "Gross receipts tax" means a tax measured by gross proceeds of sales, gross income of the business, or value proceeding or accruing.

(b) "City" includes cities, code cities, and towns.

(c) "Domicile" means the principal place from which the trade or business of the taxpayer is directed and managed. A taxpayer has only one domicile.

(d) "Intellectual property creating activity" means research, development, authorship, creation, or general or specific inventive activity without regard to whether the intellectual property creating activity actually results in the creation of patents, trademarks, trade secrets, subject matter subject to copyright, or other intellectual property.

(e) "Manufacture," "gross proceeds of sales," "gross income of the business," "value proceeding or accruing," and "royalties" have the same meanings as under chapter 82.04 RCW.

(f) "Value of products" means the value of products as determined under RCW 82.04.450.

Passed by the House March 19, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 70

[House Bill 1526]

COST—REIMBURSEMENT AGREEMENTS

AN ACT Relating to cost-reimbursement agreements between state agencies and permit applicants; and amending RCW 43.21A.690, 43.30.420, 43.70.630, 43.300.080, 70.94.085, 90.03.265, and 43.42.070.

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

Sec. 1. RCW 43.21A.690 and 2000 c 251 s 2 are each amended to read as follows:

(1) The department may enter into a written cost-reimbursement agreement with a permit applicant (~~for a complex project~~) to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement. (~~For purposes of this section, a complex project is a project for which an environmental impact statement is required under chapter 43.21C RCW.~~)

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, ~~((2005))~~ 2007. The department may continue to

administer any cost-reimbursement agreement (~~(which)~~ that was entered into before July 1, ~~((2005))~~ 2007, until the project is completed.

Sec. 2. RCW 43.30.420 and 2000 c 251 s 3 are each amended to read as follows:

(1) The department may enter into a written cost-reimbursement agreement with a permit or lease applicant (~~(for a complex project)~~) to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit or lease processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement. (~~(For purposes of this section, a complex project is a project for which an environmental impact statement is required under chapter 43.21C RCW.)~~) An applicant for a lease issued under chapter 79.90 RCW may not enter into a cost-reimbursement agreement under this section for projects conducted under the lease.

(2) The written cost-reimbursement agreement shall be negotiated with the permit or lease applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit or lease. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits or leases, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits or leases not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, ~~((2005))~~ 2007. The department may continue to administer any cost-reimbursement agreement (~~(which)~~ that was entered into before July 1, ~~((2005))~~ 2007, until the project is completed.

Sec. 3. RCW 43.70.630 and 2000 c 251 s 4 are each amended to read as follows:

(1) The department may enter into a written cost-reimbursement agreement with a permit applicant (~~(for a complex project)~~) to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate

to permit coordination, environmental review, application review, technical studies, and permit processing.

The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement. ~~((For purposes of this section, a complex project is a project for which an environmental impact statement is required under chapter 43.21C RCW.))~~

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, ~~((2005))~~ 2007. The department may continue to administer any cost-reimbursement agreement ~~((which))~~ that was entered into before July 1, ~~((2005))~~ 2007, until the project is completed.

Sec. 4. RCW 43.300.080 and 2000 c 251 s 5 are each amended to read as follows:

(1) The department may enter into a written cost-reimbursement agreement with a permit applicant ~~((for a complex project))~~ to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement. ~~((For purposes of this section, a complex project is a project for which an environmental impact statement is required under chapter 43.21C RCW.))~~

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-

reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, ~~((2005))~~ 2007. The department may continue to administer any cost-reimbursement agreement ~~((which))~~ that was entered into before July 1, ~~((2005))~~ 2007, until the project is completed.

Sec. 5. RCW 70.94.085 and 2000 c 251 s 6 are each amended to read as follows:

(1) An authority may enter into a written cost-reimbursement agreement with a permit applicant ~~((for a complex project))~~ to recover from the applicant the reasonable costs incurred by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement. ~~((For purposes of this section, a complex project is a project for which an environmental impact statement is required under chapter 43.21C RCW.))~~

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides

for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The air pollution control authority may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section.

(3) An air pollution control authority may not enter into any new cost-reimbursement agreements on or after July 1, ~~((2005))~~ 2007. The ~~((department {authority}))~~ authority may continue to administer any cost-reimbursement agreement ~~((which))~~ that was entered into before July 1, ~~((2005))~~ 2007, until the project is completed.

Sec. 6. RCW 90.03.265 and 2000 c 251 s 7 are each amended to read as follows:

Any applicant for a new withdrawal or a change, transfer, or amendment of a water right pending before the department, may initiate a cost-reimbursement agreement with the department to provide expedited review of the application. A cost-reimbursement agreement may only be initiated under this section if the applicant agrees to pay for, or as part of a cooperative effort agrees to pay for, the cost of processing his or her application and all other applications from the same source of supply which must be acted upon before the applicant's request because they were filed prior to the date of when the applicant filed. The department shall use the process established under RCW 43.21A.690 for entering into cost-reimbursement agreements ~~((, except that it is not necessary for an environmental impact statement to be filed as a prerequisite for entering into a cost-reimbursement agreement under this section))~~.

Sec. 7. RCW 43.42.070 and 2002 c 153 s 8 are each amended to read as follows:

(1) The office may coordinate negotiation and implementation of a written agreement among the project applicant, the office, and participating permit agencies to recover from the project applicant the reasonable costs incurred by the office in carrying out the provisions of RCW 43.42.050(2) and 43.42.060(2) and by participating permit agencies in carrying out permit processing tasks specified in the agreement.

(2) The office may coordinate negotiation and implementation of a written agreement among the project applicant, the office, and participating permit agencies to recover from the project applicant the reasonable costs incurred by outside independent consultants selected by the office and participating permit agencies to perform permit processing tasks.

(3) Outside independent consultants may only bill for the costs of performing those permit processing tasks that are specified in a cost-reimbursement agreement under this section. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The office shall adopt a policy to coordinate cost-reimbursement agreements with outside independent consultants. Cost-reimbursement agreements coordinated by the office under this section must be based on competitive bids that are awarded for each agreement from a prequalified consultant roster.

(5) Independent consultants hired under a cost-reimbursement agreement((;)) shall report directly to the permit agency. The office shall assure that final decisions are made by the permit agency and not by the consultant.

(6) The office shall develop procedures for determining, collecting, and distributing cost reimbursement for carrying out the provisions of this chapter.

(7) For a cost-reimbursement agreement, the office and participating permit agencies shall negotiate a work plan and schedule for reimbursement. Prior to distributing scheduled reimbursement to the agencies, the office shall verify that the agencies have met the obligations contained in their work plan.

(8) Prior to commencing negotiations with the project applicant for a cost-reimbursement agreement, the office shall request work load analyses from each participating permitting agency. These analyses shall be available to the public. The work load of a participating permit agency may only be modified with the concurrence of the agency and if there is both good cause to do so and no significant impact on environmental review.

(9) The office shall develop guidance to ensure that, in developing cost-reimbursement agreements, conflicts of interest are eliminated.

(10) For project permit processes that it coordinates, the office shall coordinate the negotiation of all cost-reimbursement agreements executed under RCW 43.21A.690, 43.30.420, 43.70.630, 43.300.080, and 70.94.085. The office and the permit agencies shall be signatories to the agreements. Each permit agency shall manage performance of its portion of the agreement.

(11) If a permit agency or the project applicant foresees, at any time, that it will be unable to meet its obligations under the cost-reimbursement agreement, it shall notify the office and state the reasons. The office shall notify the participating permit agencies and the project applicant and, upon agreement of all parties, adjust the schedule, or, if necessary, coordinate revision of the work plan.

Passed by the House March 15, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 71

[Substitute House Bill 1550]

OFFICE OF REGULATORY ASSISTANCE

AN ACT Relating to ensuring that regulatory information and assistance is available to Washington citizens through an office of regulatory assistance; amending RCW 43.42.005, 43.42.010, 43.42.030, 43.42.040, 43.131.401, and 43.131.402; and declaring an emergency.

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

Sec. 1. RCW 43.42.005 and 2002 c 153 s 1 are each amended to read as follows:

(1) The legislature finds that the health and safety of its citizens, natural resources, and the environment are vital interests of the state that must be protected to preserve the state's quality of life. The legislature also finds that the state's economic well-being is a vital interest that depends upon the development of fair, coordinated (~~environmental permitting~~) regulatory processes that ensure that the state not only protects public health and safety and natural resources but also encourages appropriate activities that stimulate growth and development. The legislature further finds that Washington's (~~environmental protection~~) regulatory programs have established strict standards to (~~reduce pollution and~~) protect public health and safety and the environment.

(2) The legislature also finds that, as the number of environmental and land use laws have grown in Washington, so have the number of permits required of business and government. The increasing number of individual permits and permit agencies has generated the potential for conflict, overlap, and duplication among various state, local, and federal permits. Lack of coordination in the processing of project applications may cause costly delays and frustration to applicants.

(3) The legislature further finds that not all project applicants require the same type of assistance. Applicants with small projects may merely need information about local and state permits and assistance in applying for those permits, while intermediate-sized projects may require a facilitated permit process, and large complex projects may need extensive coordination among local, state, and federal agencies and tribal governments.

(4) The legislature further finds that persons doing business in Washington state should have access to clear and appropriate information regarding state regulations, permit requirements, and agency rule-making processes.

(5) The legislature, therefore, finds that a range of assistance and coordination options should be available to project applicants from a state office independent of any local, state, or federal permit agency. The legislature finds that citizens, businesses, and project applicants should be provided with:

(a) A reliable and consolidated source of information concerning federal, state, and local environmental and land use laws and procedures that may apply to any given project;

(b) Facilitated interagency forums for discussion of significant issues related to the multiple permitting processes if needed for some project applicants; and

(c) Active coordination of all applicable regulatory and land use permitting procedures if needed for some project applicants.

~~((5))~~ (6) The legislature declares that the purpose of this chapter is to transfer the existing permit assistance center in the department of ecology to a new office of permit assistance in the office of financial management to:

(a) Assure that citizens, businesses, and project applicants will continue to be provided with vital information regarding environmental and land use laws and with assistance in complying with environmental and land use laws to promote understanding of these laws and to protect public health and safety and the environment;

(b) Ensure that facilitation of project permit decisions by permit agencies promotes both process efficiency and environmental protection;

(c) Allow for coordination of permit processing for large projects upon project applicants' request and at project applicants' expense to promote efficiency, ensure certainty, and avoid conflicts among permit agencies; and

(d) Provide these services through an office independent of any permit agency to ensure that any potential or perceived conflicts of interest related to providing these services or making permit decisions can be avoided.

~~((6))~~ (7) The legislature also declares that the purpose of this chapter is to provide citizens of the state with access to information regarding state regulations, permit requirements, and agency rule-making processes in Washington state.

(8) The legislature intends that establishing an office of ~~((permit))~~ regulatory assistance will provide these services without abrogating or limiting the authority of any permit agency to make decisions on permits that it issues or any rule-making agency to make decisions on regulations. The legislature therefore declares that the office of ~~((permit))~~ regulatory assistance shall have authority to provide these services but shall not have any authority to make decisions on permits.

Sec. 2. RCW 43.42.010 and 2002 c 153 s 2 are each amended to read as follows:

(1) The office of ~~((permit))~~ regulatory assistance is created in the office of financial management and shall be administered by the office of the governor to assist citizens, businesses, and project applicants.

(2) The office shall:

(a) Maintain and furnish information as provided in RCW 43.42.040;

(b) Furnish facilitation as provided in RCW 43.42.050;

(c) Furnish coordination as provided in RCW 43.42.060;

(d) Coordinate cost reimbursement as provided in RCW 43.42.070;

(e) Work with state agencies and local governments to continue to develop a range of permit assistance options for project applicants;

(f) Review initiatives developed by the transportation permit efficiency and accountability committee established in chapter 47.06C RCW and determine if any would be beneficial if implemented for other types of projects;

(g) Work to develop informal processes for dispute resolution between agencies and permit applicants;

(h) Conduct customer surveys to evaluate its effectiveness; and

(i) Provide the following biennial reports to the governor and the appropriate committees of the legislature:

(i) A performance report, based on the customer surveys required in (h) of this subsection;

(ii) A report on any statutory or regulatory conflicts identified by the office in the course of its duties that arise from differing legal authorities and roles of agencies and how these were resolved. The report may include recommendations to the legislature and to agencies; and

(iii) A report regarding use of outside independent consultants under RCW 43.42.070, including the nature and amount of work performed and implementation of requirements relating to costs.

(3) A director of the office shall be hired no later than June 1, 2003.

(4) The office shall give priority to furnishing assistance to small projects when expending general fund moneys allocated to it.

Sec. 3. RCW 43.42.030 and 2002 c 153 s 4 are each amended to read as follows:

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

(1) "Office" means the office of ~~((permit))~~ regulatory assistance in the office of financial management established in RCW 43.42.010.

(2) "Permit" means any permit, certificate, use authorization, or other form of governmental approval required in order to construct or operate a project in the state of Washington.

(3) "Permit agency" means any state or local agency authorized by law to issue permits.

(4) "Project" means any activity, the conduct of which requires a permit or permits from one or more permit agencies.

(5) "Project applicant" means a citizen, business, or any entity seeking a permit or permits in the state of Washington.

Sec. 4. RCW 43.42.040 and 2002 c 153 s 5 are each amended to read as follows:

(1) The office shall assist citizens, businesses, and project applicants by maintaining and furnishing information, including, but not limited to:

~~((1))~~ (a) To the extent possible, compiling and periodically updating one or more handbooks containing lists and explanations of permit laws, including all relevant local, state, federal, and tribal laws. In providing this information, the office shall seek the cooperation of relevant local, state, and federal agencies and tribal governments;

~~((2))~~ (b) Establishing and providing notice of a point of contact for obtaining information;

~~((3))~~ (c) Working closely and cooperatively with the business license center in providing efficient and nonduplicative service;

~~((4))~~ (d) Collecting and making available information regarding federal, state, local, and tribal government programs that rely on private professional expertise to assist agencies in project permit review; and

~~((5))~~ (e) Developing a call center and a web site.

(2) The office shall coordinate among state agencies to develop an office web site that is linked through the office of the governor's web site and that contains information regarding regulatory requirements for businesses and citizens in Washington state. At a minimum, the web site shall provide information or links to information on:

(a) Federal, state, and local rule-making processes and permit requirements applicable to Washington businesses and citizens;

(b) Federal, state, and local licenses, permits, and approvals necessary to start and operate a business or develop real property in Washington;

(c) State and local building codes;

(d) Federal, state, and local economic development programs that may be available to businesses in Washington; and

(e) State and local agencies regulating or providing assistance to citizens and businesses operating a business or developing real property in Washington.

(3) This section does not create an independent cause of action, affect any existing cause of action, or create any new cause of action regarding the application of regulatory or permit requirements.

Sec. 5. RCW 43.131.401 and 2002 c 153 s 13 are each amended to read as follows:

The office of ~~((permit))~~ regulatory assistance established in RCW 43.42.010 and its powers and duties shall be terminated June 30, 2007, as provided in RCW 43.131.402.

Sec. 6. RCW 43.131.402 and 2002 c 153 s 14 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2008:

- (1) RCW 43.42.005 and section 1 of this act & 2002 c 153 s 1;
- (2) RCW 43.42.010 and section 2 of this act & 2002 c 153 s 2;
- (3) RCW 43.42.020 and 2002 c 153 s 3;
- (4) RCW 43.42.030 and section 3 of this act & 2002 c 153 s 4;
- (5) RCW 43.42.040 and section 4 of this act & 2002 c 153 s 5;
- (6) RCW 43.42.050 and 2002 c 153 s 6;
- (7) RCW 43.42.060 and 2002 c 153 s 7;
- (8) RCW 43.42.070 and 2002 c 153 s 8;
- (9) ~~((Section 9 of this act;~~
- ~~(10)))~~ RCW 43.42.905 and 2002 c 153 s 10;
- ~~((11)))~~ (10) RCW 43.42.900 and 2002 c 153 s 11; and
- ~~((12)))~~ (11) RCW 43.42.901 and 2002 c 153 s 12.

NEW SECTION. Sec. 7. Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 19, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 72

[House Bill 1566]

COUNTY AUDITORS—CLAIM RETENTION

AN ACT Relating to the retention of original claims by county auditors; and amending RCW 36.22.070.

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

Sec. 1. RCW 36.22.070 and 1963 c 4 s 36.22.070 are each amended to read as follows:

~~((He))~~ (1) The auditor shall also retain all original bills and indorse thereon claimant's name, nature of claim, the action had, and if a warrant was issued, date and number the voucher or claim the same as the warrant.

(2) The auditor may retain all claims, bills, and associated records referenced in subsection (1) of this section in an electronic format sufficient for the conduct of official business.

(3) For the purposes of this section, "claims" shall exclude claims filed against the county in accordance with the provisions of chapter 4.96 RCW.

Passed by the House March 10, 2003.
 Passed by the Senate April 9, 2003.
 Approved by the Governor April 18, 2003.
 Filed in Office of Secretary of State April 18, 2003.

CHAPTER 73

[House Bill 1591]

EXCISE TAXES—INTEREST

AN ACT Relating to modifying excise tax interest provisions; amending RCW 82.32.050 and 82.32.060; and providing an effective date.

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

Sec. 1. RCW 82.32.050 and 1997 c 157 s 1 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail of the additional amount and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c) Interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest shall be computed until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually~~((, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States secretary of the treasury)).~~ That average shall be

calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(4) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date.

Sec. 2. RCW 82.32.060 and 1999 c 358 s 13 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection((s)) (2) ~~((and (3)))~~ of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2) The execution of a written waiver under RCW 82.32.050 or 82.32.100 shall extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

~~(3) ((Notwithstanding the foregoing limitations there shall be refunded or credited to taxpayers engaged in the performance of United States government contracts or subcontracts the amount of any tax paid, measured by that portion of the amounts received from the United States, which the taxpayer is required by contract or applicable federal statute to refund or credit to the United States, if claim for such refund is filed by the taxpayer with the department within one year of the date that the amount of the refund or credit due to the United States is finally determined and filed within four years of the date on which the tax was paid: PROVIDED, That no interest shall be allowed on such refund.~~

~~(4))~~ Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

~~((5))~~ (4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which

were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in the same manner, as provided in subsection ~~((4))~~ (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, 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 for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, 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 for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, shall be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest shall be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest shall be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest shall be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice shall accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest shall be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

NEW SECTION. Sec. 3. Section 2 of this act takes effect January 1, 2004.

Passed by the House March 11, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 74

[House Bill 1631]

FIRE PROTECTION SPRINKLER SYSTEM CONTRACTORS

AN ACT Relating to regulating fire protection sprinkler system contractors; amending RCW 18.160.030; adding a new section to chapter 18.160 RCW; and prescribing penalties.

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

Sec. 1. RCW 18.160.030 and 2000 c 171 s 35 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;

(iii) Subject to section 2 of this act, adopt rules defining infractions under this chapter and fines to be assessed for those infractions;

(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) Assign a certificate number to each certificate of competency holder; and

(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.

NEW SECTION. Sec. 2. A new section is added to chapter 18.160 RCW to read as follows:

(1) A fire protection sprinkler system contractor found to have committed an infraction under this chapter as defined in rule under RCW 18.160.030(2)(b)(iii) shall be assessed a fine of not less than two hundred dollars and not more than five thousand dollars.

(2) A fire protection sprinkler system contractor who fails to obtain a certificate of competency under RCW 18.160.040 shall be assessed a fine of not less than one thousand dollars and not more than five thousand dollars.

(3) All fines collected under this section shall be deposited into the fire protection contractor license fund.

Passed by the House March 14, 2003.
Passed by the Senate April 9, 2003.
Approved by the Governor April 18, 2003.
Filed in Office of Secretary of State April 18, 2003.

CHAPTER 75

[House Bill 1637]

PROBLEM GAMBLING—PUBLIC AWARENESS

AN ACT Relating to information for compulsive gamblers; and amending RCW 9.46.071.

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

Sec. 1. RCW 9.46.071 and 1994 c 218 s 6 are each amended to read as follows:

The legislature recognizes that some individuals in this state are problem or compulsive gamblers. Because the state promotes and regulates gambling through the activities of the state lottery commission, the Washington horse racing commission, and the Washington state gambling commission, the state has the responsibility to continue to provide resources for the support of services for problem and compulsive gamblers. Therefore, at a minimum, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission shall jointly develop informational signs concerning problem and compulsive gambling which include a toll-free hot line number for problem and compulsive gamblers. The signs shall be placed in the establishments of gambling licensees, horse racing licensees, and lottery retailers. In addition, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission may also contract with other qualified entities to provide public awareness, training, and other services to ensure the intent of this section is fulfilled.

Passed by the House February 28, 2003.
Passed by the Senate April 9, 2003.
Approved by the Governor April 18, 2003.
Filed in Office of Secretary of State April 18, 2003.

CHAPTER 76

[Substitute House Bill 1722]

TAXATION—LIMITED CONNECTIONS TO STATE

AN ACT Relating to the taxability of persons with limited connections to Washington; amending RCW 82.08.050 and 82.12.040; adding a new section to chapter 82.04 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** It is the intent of the legislature to exempt from business and occupation tax and to relieve from the obligation to collect sales and use tax from certain sellers with very limited connections to Washington. These sellers are currently relieved from the obligation to collect sales and use tax because of the provisions of the federal internet tax freedom act. The legislature intends to continue to relieve these particular sellers from that obligation in the event that the federal internet tax freedom act is not extended.

The legislature further intends that any relief from tax obligations provided by this act expire at such time as the United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers, or a court of competent jurisdiction, in a judgment not subject to review, determines that a state can impose sales and use tax collection duties on remote sellers.

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

(1) This chapter does not apply to a person making sales in Washington if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. For purposes of this section, persons are "affiliated persons" with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons which are affiliated with respect to each other.

(2) This section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

Sec. 3. RCW 82.08.050 and 2001 c 188 s 4 are each amended to read as follows:

(1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060. The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter shall be guilty of a gross misdemeanor.

(2) In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer in good faith a properly executed resale certificate under RCW 82.04.470 or a copy of a direct pay permit issued under RCW 82.32.087.

(3) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller

who 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 buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor. The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(4) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer 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 buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in section 2 of this act.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

Sec. 4. RCW 82.12.040 and 2001 c 188 s 5 are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales, or making transfers of either possession or title or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales

and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department shall in rules specify activities which constitute engaging in business activity within this state, and shall keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the department and any retailer who appropriates or converts the tax collected to his own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed shall be guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of his own acts or the result of acts or conditions beyond his control, he shall nevertheless, be personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in section 2 of this act.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

Passed by the House March 15, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 77

[Substitute House Bill 1738]

STATE EMPLOYMENT—WAGE OVERPAYMENT—RECOUPMENT

AN ACT Relating to the recoupment of state employee salary and wage overpayments; and adding new sections to chapter 49.48 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 49.48 RCW to read as follows:

(1) Debts due the state for the overpayment of wages to state employees may be recovered by the employer by deductions from subsequent wage payments as provided in section 2 of this act, or by civil action. If the overpayment is recovered by deduction from the employee's subsequent wages, each deduction shall not exceed: (a) Five percent of the employee's disposable earnings in a pay period other than the final pay period; or (b) the amount still outstanding from the employee's disposable earnings in the final pay period. The deductions from wages shall continue until the overpayment is fully recouped.

(2) Nothing in this act prevents: (a) An employee from making payments in excess of the amount specified in subsection (1)(a) of this section to an employer; or (b) an employer and employee from agreeing to a different overpayment amount than that specified in the notice in section 2(1) of this act or to a method other than a deduction from wages for repayment of the overpayment amount.

NEW SECTION. Sec. 2. A new section is added to chapter 49.48 RCW to read as follows:

(1) When an employer determines that an employee was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, a demand for payment within twenty calendar days of the date on which the employee received the notice, and the rights of the employee under this section.

(2) The notice may be served upon the employee in the manner prescribed for the service of a summons in a civil action, or be mailed by certified mail, return receipt requested, to the employee at his or her last known address.

(3) Within twenty calendar days after receiving the notice from the employer that an overpayment has occurred, the employee may request, in writing, that the employer review its finding that an overpayment has occurred. The employee may choose to have the review conducted through written submission of information challenging the overpayment or through a face-to-face meeting with the employer. If the request is not made within the twenty-day period as provided in this subsection, the employee may not further challenge the overpayment and has no right to further agency review, an adjudicative proceeding, or judicial review.

(4) Upon receipt of an employee's written request for review of the overpayment, the employer shall review the employee's challenge to the overpayment. Upon completion of the review, the employer shall notify the employee in writing of the employer's decision regarding the employee's

challenge. The notification must be sent by certified mail, return receipt requested, to the employee at his or her last known address.

(5) If the employee is dissatisfied with the employer's decision regarding the employee's challenge to the overpayment, the employee may request an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW. The employee's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the employer's notice of overpayment. The application must be served on and received by the employer within twenty-eight calendar days of the employee's receipt of the employer's decision following review of the employee's challenge. Notwithstanding RCW 34.05.413(3), agencies may not vary the requirements of this subsection (5) by rule or otherwise. The employee must serve the employer by certified mail, return receipt requested.

(6) If the employee does not request an adjudicative proceeding within the twenty-eight-day period, the amount of the overpayment provided in the notice shall be deemed final and the employer may proceed to recoup the overpayment as provided in this section and section 1 of this act.

(7) Where an adjudicative proceeding has been requested, the presiding or reviewing officer shall determine the amount, if any, of the overpayment received by the employee.

(8) If the employee fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice sent to the employee after the employer's review of the employee's challenge to the overpayment to be assessed against the employee and subject to collection action by the state as provided in section 1 of this act.

(9) Failure to make an application for a review by the employer as provided in subsections (3) and (4) of this section or an adjudicative proceeding within twenty-eight calendar days of the date of receiving notice of the employer's decision after review of the overpayment shall result in the establishment of a final debt against the employee in the amount asserted by the employer, which debt shall be collected as provided in section 1 of this act.

(10) As used in this act:

(a) "Employer" means the state of Washington and any of its agencies, institutions, boards, or commissions; and

(b) "Overpayment" means a payment of wages for a pay period that is greater than the amount earned for a pay period.

NEW SECTION. Sec. 3. A new section is added to chapter 49.48 RCW to read as follows:

The office of financial management shall adopt the rules necessary to implement this act.

Passed by the House March 11, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor April 18, 2003.

Filed in Office of Secretary of State April 18, 2003.

CHAPTER 78

[Substitute House Bill 1848]

ELECTRICAL LICENSING—MEDICAL DEVICES EXEMPT

AN ACT Relating to exempting certain medical devices from electrical licensing requirements; and amending RCW 19.28.371.

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

Sec. 1. RCW 19.28.371 and 1981 c 57 s 1 are each amended to read as follows:

~~((Any device used or useful in the diagnosis or treatment of disease or injury))~~ (1) A medical device which is not in violation of the Medical Device Amendments of 1976, Public Law No. 94-295, 90 Stat. 539, as amended from time to time, and as interpreted by the Food and Drug Administration of the United States Department of Health and Human Services or its successor, shall be deemed to be in compliance with all requirements imposed by this chapter.

(2) The installation, maintenance, or repair of a medical device deemed in compliance with this chapter is exempt from licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.

- Passed by the House March 12, 2003.
- Passed by the Senate April 9, 2003.
- Approved by the Governor April 21, 2003.
- Filed in Office of Secretary of State April 21, 2003.

CHAPTER 79

[Engrossed House Bill 2030]

BUSINESS AND OCCUPATION TAX

AN ACT Relating to changing requirements regarding state and local tax to provide for municipal business and occupation tax uniformity and fairness; adding new sections to chapter 35.21 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. LEGISLATIVE FINDINGS AND INTENT.** The legislature finds that businesses in Washington are concerned about the potential for multiple taxation that arises due to the various city business and occupation taxes and are concerned about the lack of uniformity among city jurisdictions. The current system has a negative impact on Washington's business climate. The legislature further finds that local business and occupation tax revenue provides a sizable portion of city revenue that is used for essential services. The legislature recognizes that local government services contribute to a healthy business climate.

The legislature intends to provide for a more uniform system of city business and occupation taxes that eliminates multiple taxation, while allowing for some continued local control and flexibility to cities.

NEW SECTION. Sec. 2. MUNICIPAL BUSINESS AND OCCUPATION TAX—LIMITED SCOPE. This act does not apply to taxes on any service that historically or traditionally has been taxed as a utility business for municipal tax purposes, such as:

- (1) A light and power business or a natural gas distribution business, as defined in RCW 82.16.010;
- (2) A telephone business, as defined in RCW 82.04.065;
- (3) Cable television services;
- (4) Sewer or water services;
- (5) Drainage services;
- (6) Solid waste services; or
- (7) Steam services.

NEW SECTION. Sec. 3. MUNICIPAL GROSS RECEIPTS TAX—DEFINITIONS.

The definitions in this section apply throughout this act, unless the context clearly requires otherwise.

- (1) "Business" has the same meaning as given in chapter 82.04 RCW.
- (2) "City" means a city, town, or code city.
- (3) "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.
- (4) "Value of products" has the same meaning as given in chapter 82.04 RCW.
- (5) "Gross income of the business" has the same meaning as given in chapter 82.04 RCW.
- (6) "Gross proceeds of sales" has the same meaning as given in chapter 82.04 RCW.

NEW SECTION. Sec. 4. MUNICIPAL BUSINESS AND OCCUPATION TAX—MODEL ORDINANCE. (1)(a) The cities, working through the association of Washington cities, shall form a model ordinance development committee made up of a representative sampling of cities that as of the effective date of this section impose a business and occupation tax. This committee shall work through the association of Washington cities to adopt a model ordinance on municipal gross receipts business and occupation tax. The model ordinance and subsequent amendments shall be adopted using a process that includes opportunity for substantial input from business stakeholders and other members of the public. Input shall be solicited from statewide business associations and from local chambers of commerce and downtown business associations in cities that levy a business and occupation tax.

(b) The municipal research council shall contract to post the model ordinance on an internet web site and to make paper copies available for inspection upon request. The department of revenue and the department of licensing shall post copies of or links to the model ordinance on their internet web sites. Additionally, a city that imposes a business and occupation tax must make copies of its ordinance available for inspection and copying as provided in chapter 42.17 RCW.

(c) The definitions and tax classifications in the model ordinance may not be amended more frequently than once every four years, however the model ordinance may be amended at any time to comply with changes in state law. Any amendment to a mandatory provision of the model ordinance must be adopted with the same effective date by all cities.

(2) A city that imposes a business and occupation tax must adopt the mandatory provisions of the model ordinance. The following provisions are mandatory:

(a) A system of credits that meets the requirements of section 6 of this act and a form for such use;

(b) A uniform, minimum small business tax threshold of at least the equivalent of twenty thousand dollars in gross income annually. A city may elect to deviate from this requirement by creating a higher threshold or exemption but it shall not deviate lower than the level required in this subsection. If a city has a small business threshold or exemption in excess of that provided in this subsection as of January 1, 2003, and chooses to deviate below the threshold or exemption level that was in place as of January 1, 2003, the city must notify all businesses licensed to do business within the city at least one hundred twenty days prior to the potential implementation of a lower threshold or exemption amount;

(c) Tax reporting frequencies that meet the requirements of section 7 of this act;

(d) Penalty and interest provisions that meet the requirements of sections 8 and 9 of this act;

(e) Claim periods that meet the requirements of section 10 of this act;

(f) Refund provisions that meet the requirements of section 11 of this act; and

(g) Definitions, which at a minimum, must include the definitions enumerated in sections 3 and 12 of this act. The definitions in chapter 82.04 RCW shall be used as the baseline for all definitions in the model ordinance, and any deviation in the model ordinance from these definitions must be described by a comment in the model ordinance.

(3) Except for the system of credits developed to address multiple taxation under subsection (2)(a) of this section, a city may adopt its own provisions for tax exemptions, tax credits, and tax deductions.

(4) Any city that adopts an ordinance that deviates from the nonmandatory provisions of the model ordinance shall make a description of such differences available to the public, in written and electronic form.

NEW SECTION. Sec. 5. MUNICIPAL GROSS RECEIPTS TAX—NEXUS. A city may not impose a business and occupation tax on a person unless that person has nexus with the city. For the purposes of this section, the term "nexus" means business activities conducted by a person sufficient to subject that person to the taxing jurisdiction of a city under the standards established for interstate commerce under the commerce clause of the United States Constitution.

NEW SECTION. Sec. 6. MUNICIPAL BUSINESS AND OCCUPATION TAX—MULTIPLE TAXATION—CREDIT SYSTEM. (1) A city that imposes

a business and occupation tax shall provide for a system of credits to avoid multiple taxation as follows:

(a) Persons who engage in business activities that are within the purview of more than one classification of the tax shall be taxable under each applicable classification.

(b) Notwithstanding anything to the contrary in this section, if imposition of the tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit only to the extent necessary to preserve the validity of the tax.

(c) Persons taxable under the retailing or wholesaling classification with respect to selling products in a city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid by the person (i) with respect to the manufacturing of the products sold in the city, and (ii) with respect to the extracting of the products, or the ingredients used in the products, sold in the city. The amount of the credit shall not exceed the tax liability arising with respect to the sale of those products.

(d) Persons taxable under the manufacturing classification with respect to manufacturing products in a city shall be allowed a credit against that tax for any eligible gross receipts tax paid by the person with respect to extracting the ingredients of the products manufactured in the city and with respect to manufacturing the products other than in the city. The amount of the credit shall not exceed the tax liability arising with respect to the manufacturing of those products.

(e) Persons taxable under the retailing or wholesaling classification with respect to selling products in a city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid by the person with respect to the printing, or the printing and publishing, of the products sold within the city. The amount of the credit shall not exceed the tax liability arising with respect to the sale of those products.

(2) The model ordinance shall be drafted to address the issue of multiple taxation for those tax classifications that are in addition to those enumerated in subsection (1)(c) through (e) of this section. The objective of any such provisions shall be to eliminate multiple taxation of the same income by two or more cities.

NEW SECTION. Sec. 7. MUNICIPAL BUSINESS AND OCCUPATION TAX—REPORTING FREQUENCY. A city that imposes a business and occupation tax shall allow reporting and payment of tax on a monthly, quarterly, or annual basis. The frequency for any particular person may be assigned at the discretion of the city, except that monthly reporting may be assigned only if it can be demonstrated that the taxpayer is remitting excise tax to the state on a monthly basis. For persons assigned a monthly frequency, payment is due within the same time period provided for monthly taxpayers under RCW 82.32.045. For persons assigned a quarterly or annual frequency, payment is due within the same time period as provided for quarterly or annual frequency under RCW 82.32.045.

NEW SECTION. Sec. 8. MUNICIPAL BUSINESS AND OCCUPATION TAX—PENALTIES AND INTEREST. (1) A city that imposes a business and

occupation tax shall compute interest charged a taxpayer on an underpaid tax or penalty in accordance with RCW 82.32.050.

(2) A city that imposes a business and occupation tax shall compute interest paid on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060.

NEW SECTION. Sec. 9. MUNICIPAL BUSINESS AND OCCUPATION TAX—PENALTIES. A city that imposes a business and occupation tax shall provide for the imposition of penalties in accordance with chapter 82.32 RCW.

NEW SECTION. Sec. 10. MUNICIPAL BUSINESS AND OCCUPATION TAX—CLAIM PERIOD. The provisions relating to the time period allowed for an assessment or correction of an assessment for additional taxes, penalties, or interest shall be in accordance with chapter 82.32 RCW.

NEW SECTION. Sec. 11. MUNICIPAL BUSINESS AND OCCUPATION TAX—REFUND PERIOD. The provisions relating to the time period allowed for a refund of taxes paid shall be in accordance with chapter 82.32 RCW.

NEW SECTION. Sec. 12. MUNICIPAL BUSINESS AND OCCUPATION TAX—DEFINITIONS—TAX CLASSIFICATIONS. (1) In addition to the definitions in section 3 of this act, the following terms and phrases must be defined in the model ordinance under section 4 of this act, and such definitions shall include any specific requirements as noted in this subsection:

(a) Eligible gross receipts tax.

(b) Extracting.

(c) Manufacturing. Software development may not be defined as a manufacturing activity.

(d) Retailing.

(e) Retail sale.

(f) Services. The term "services" excludes retail or wholesale services.

(g) Wholesale sale.

(h) Wholesaling.

(i) To manufacture.

(j) Commercial and industrial use.

(k) Engaging in business.

(l) Person.

(2) Any tax classifications in addition to those enumerated in subsection (1) of this section that are included in the model ordinance must be uniform among all cities.

NEW SECTION. Sec. 13. MUNICIPAL BUSINESS AND OCCUPATION TAX—ALLOCATION AND APPORTIONMENT OF INCOME. A city that imposes a business and occupation tax shall provide for the allocation and apportionment of a person's gross income, other than persons subject to the provisions of chapter 82.14A RCW, as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties shall be allocated to the location where the activity takes place.

(a) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(b) If a business activity allocated under this subsection (1) takes place in more than one city and all cities impose a gross receipts tax, a credit shall be

allowed as provided in section 6 of this act; if not all of the cities impose a gross receipts tax, the affected cities shall allow another credit or allocation system as they and the taxpayer agree.

(2) Gross income derived as royalties from the granting of intangible rights shall be allocated to the commercial domicile of the taxpayer.

(3) Gross income derived from activities taxed as services shall be apportioned to a city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:

(i) The customer location is in the city; or

(ii) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

(iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

(i) Separate accounting;

(ii) The use of a single factor;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(4) The definitions in this subsection apply throughout this section.

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(c) "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(d) "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

(e) "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

(f) "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

(g) "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

(h) "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

NEW SECTION. Sec. 14. MUNICIPAL BUSINESS AND OCCUPATION TAX—IMPLEMENTATION BY CITIES—CONTINGENT AUTHORITY. Cities imposing business and occupation taxes must comply with all requirements of sections 2 through 13 of this act by December 31, 2004. A city that has not complied with the requirements of sections 2 through 13 of this act by December 31, 2004, may not impose a tax that is imposed by a city on the privilege of engaging in business activities. Cities imposing business and occupation taxes after December 31, 2004, must comply with sections 2 through 13 of this act.

NEW SECTION. Sec. 15. STUDY OF POTENTIAL NET FISCAL IMPACTS. (1) The department of revenue shall conduct a study of the net fiscal impacts of this act, with particular emphasis on the revenue impacts of the apportionment and allocation method contained in section 13 of this act and any revenue impact resulting from the increased uniformity and consistency provided through the model ordinance. In conducting the study, the department shall use, and regularly consult with, a committee composed of an equal representation from interested business representatives and from a representative sampling of cities imposing business and occupation taxes. The department shall report the final results of the study to the governor and the fiscal committees of the legislature by November 30, 2005. In addition, the department shall provide progress reports to the governor and the fiscal committees of the legislature on November 30, 2003, and November 30, 2004.

As part of its report, the department shall examine and recommend options to address any adverse revenue impacts to local jurisdictions.

(2) For the purposes of this section, "net fiscal impacts" means accounting for the potential of both positive and negative fiscal impacts on local jurisdictions that may result from this act.

(3) It is the intent of the legislature through this study to provide accurate fiscal impact analysis and recommended options to alleviate revenue impacts from this act so as to allow local jurisdictions to anticipate and appropriately address any potential adverse revenue impacts from this act.

NEW SECTION. Sec. 16. BASELINE STUDY. The department of revenue shall report by December 31, 2004, to the governor and the fiscal committees of the legislature on the definitions used in the proposed model ordinance. The report shall detail the status of the definitions using the baseline standards under section 4(2)(g) of this act, noting any deviations from the definitions in chapter 82.04 RCW and the reason for such deviation. The report shall also estimate the fiscal impact on taxpayers of any deviations from the definitions under chapter 82.04 RCW.

NEW SECTION. Sec. 17. CAPTIONS. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 18. Sections 2 through I4 of this act are each added to chapter 35.21 RCW.

NEW SECTION. Sec. 19. EFFECTIVE DATE. Section 13 of this act takes effect January 1, 2008.

Passed by the House March 19, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor April 21, 2003.

Filed in Office of Secretary of State April 21, 2003.

CHAPTER 80

[Substitute House Bill 2039]

CONSTRUCTION LIABILITY

AN ACT Relating to construction liability; and adding a new section to chapter 4.16 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 4.16 RCW to read as follows:

(1) Persons engaged in any activity defined in RCW 4.16.300 may be excused, in whole or in part, from any obligation, damage, loss, or liability for those defined activities under the principles of comparative fault for the following affirmative defenses:

(a) To the extent it is caused by an unforeseen act of nature that caused, prevented, or precluded the activities defined in RCW 4.16.300 from meeting the applicable building codes, regulations, and ordinances in effect at the commencement of construction. For purposes of this section an "unforeseen act of nature" means any weather condition, earthquake, or manmade event such as war, terrorism, or vandalism;

(b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this section. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim;

(c) To the extent it is caused by the homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or manufacturer's maintenance recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of the schedule, the schedule was reasonable at the time it was issued, and the homeowner failed to substantially comply with the written schedule;

(d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose;

(e) As to a particular violation for which the builder has obtained a valid release;

(f) To the extent that the builder's repair corrected the alleged violation or defect;

(g) To the extent that a cause of action does not accrue within the statute of repose pursuant to RCW 4.16.310 or that an actionable cause as set forth in RCW 4.16.300 is not filed within the applicable statute of limitations. In contract actions the applicable contract statute of limitations expires, regardless of discovery, six years after substantial completion of construction, or during the period within six years after the termination of the services enumerated in RCW 4.16.300, whichever is later;

(h) As to any causes of action to which this section does not apply, all applicable affirmative defenses are preserved.

(2) This section does not apply to any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

Passed by the House March 13, 2003.
Passed by the Senate April 9, 2003.
Approved by the Governor April 21, 2003.
Filed in Office of Secretary of State April 21, 2003.

CHAPTER 81

[Engrossed House Bill 2064]
MILITARY FACILITIES STUDY

AN ACT Relating to a military facilities task force; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that placing a high priority on the continuation of military activities at the military bases located in our state is in the best interest of the state and the United States. The combined efforts of the state and local governments and the private sector, working in partnership

with the United States military, will be required to avoid the closure of these bases. Therefore, the joint committee on veterans' and military affairs shall conduct a Washington military facilities study to determine and coordinate statewide efforts needed to ensure that all military facilities in Washington retain their premier status with respect to their national defense missions.

NEW SECTION. Sec. 2. (1) The joint committee on veterans' and military affairs shall inform the governor and the legislature on matters affecting the operational viability of military facilities within Washington through:

- (a) Understanding the mission of each military facility in Washington;
- (b) Examining the integral role of Washington facilities within the national defense structure;
- (c) Identifying any obstacles to the mission of each facility according to criteria used by its respective branch of service;
- (d) Examining any law, ordinance, requirement, rule, or regulation that impacts each facility's mission;
- (e) Evaluating any locally developed proposals intended to mitigate the impact of military facilities on surrounding areas or the impact of nonmilitary activities in surrounding areas on the mission of military facilities; and
- (f) Studying the economic impacts of the facilities on the Washington economy.

(2) The joint committee shall make recommendations to the governor and the legislature regarding actions needed to ensure the viability of military facilities, including:

- (a) Expenditures appropriate to ensure the proper functioning and continued operation of military facilities within the state;
- (b) Required changes to state law, local ordinances, local zoning requirements, or any other state or local requirement, rule, or regulation in order to encourage the continued operation of military facilities within the state; and
- (c) Any required actions to be taken by the state at the federal level in support of military facilities within the state.

NEW SECTION. Sec. 3. In carrying out the requirements of this act, the joint committee shall invite participation and seek input from any experts it deems appropriate, but at a minimum shall consult with representatives and nonelected community leaders of each county and city containing a major military facility and the military authorities of each military base in the state.

NEW SECTION. Sec. 4. The joint committee shall begin work on the Washington military facilities study immediately after the completion of the legislative session. It shall continue until such time as the consensus of committee membership is to conclude.

Passed by the House March 13, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 21, 2003.

Filed in Office of Secretary of State April 21, 2003.

CHAPTER 82

[Engrossed House Bill 1808]

ELECTRICAL ENGINEERING DEGREE PROGRAMS

AN ACT Relating to establishing standards of review in order to change lines of instruction at research universities; amending RCW 28B.10.115; and adding a new section to chapter 28B.80 RCW.

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

Sec. I. RCW 28B.10.115 and 1985 c 218 s 1 are each amended to read as follows:

The courses of instruction of both the University of Washington and Washington State University shall embrace as major lines, pharmacy, architecture, civil engineering, ~~((electrical—engineering,))~~ mechanical engineering, chemical engineering, and forest management as distinguished from forest products and logging engineering which are exclusive to the University of Washington. These major lines shall be offered and taught at said institutions only.

***NEW SECTION. Sec. 2.** *A new section is added to chapter 28B.80 RCW to read as follows:*

(1) This section applies to any amendment to RCW 28B.10.115 after January 1, 2003, that changes the major lines of instruction exclusive to the University of Washington or Washington State University, including the amendments in chapter . . . , Laws of 2003 (this act).

(2) If a four-year institution requests approval under RCW 28B.80.340 of a new degree program that is the result of legislation enacted to change the terms of RCW 28B.10.115, the higher education coordinating board shall conduct an independent analysis using information from a variety of sources as part of the board's review of the proposed program, including but not limited to information submitted by the institution. Such information shall include:

(a) Detailed evidence of why the program is justified, including the size and scope of student, employer, and community demand for the program;

(b) The feasibility of using existing public or private capacity for the program and comparisons of the state cost of providing existing and proposed capacity. Any institution that offers programs under this section shall comply with all applicable state rules and regulations;

(c) Projected future enrollment in the program and substantiation of the enrollment estimates; and

(d) Additional information as requested by the board regarding demand, need, and cost-effectiveness of the program.

(3) The higher education coordinating board shall submit a complete analysis of a proposed program under this section to the higher education committees of the legislature before making a final determination regarding approval of the program.

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

Passed by the House March 15, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor April 21, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 21, 2003.

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

"I am returning herewith, without my approval, as to section 2, Engrossed House Bill No. 1808 entitled:

"An Act relating to establishing standards of review in order to change lines of instruction at research universities;"

This legislation allows any public university to apply to the Higher Education Coordinating Board to offer an electrical engineering degree.

Section 2 requires the Higher Education Coordinating Board to conduct an analysis of any proposed electrical engineering program using a variety of sources of information. Information reviewed must include: detailed evidence of student, employer and community demand for the program; the feasibility of using existing public or private program capacity rather than opening a new program; and projected future enrollment. This section also requires that the Higher Education Coordinating Board submit its analysis to the higher education committees of the legislature before making a final decision regarding program approval.

I encourage the Higher Education Coordinating Board to follow the criteria set forth in section 2 of this bill. However, current statute already requires the Higher Education Coordinating Board to review and approve all proposals for new degree programs. Therefore, section 2 is not necessary.

For these reasons, I have vetoed section 2 of Engrossed House Bill No. 1808.

With the exception of section 2, Engrossed House Bill No. 1808 is approved."

CHAPTER 83

[Engrossed Substitute House Bill 1853]

FERRY SERVICE

AN ACT Relating to improvement of passenger ferry service; amending RCW 47.60.120, 47.64.090, 82.14.050, 36.57A.010, 36.57A.100, 81.84.010, 81.84.020, 81.84.060, and 84.52.043; reenacting and amending RCW 84.52.010 and 84.52.052; adding new sections to chapter 36.57A RCW; adding a new section to chapter 47.52 RCW; adding a new section to chapter 82.80 RCW; adding a new section to chapter 82.14 RCW; adding new sections to chapter 36.54 RCW; creating new sections; and declaring an emergency.

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

PART I GENERAL

NEW SECTION. Sec. 101. INTENT. The legislature finds that passenger-only ferry service is a key element to the state's transportation system and that it is in the interest of the state to ensure provision of such services. The legislature further finds that diminished state transportation resources require that regional and local authorities be authorized to develop, operate, and fund needed services.

The legislature recognizes that if the state eliminates passenger-only ferry service on one or more routes, it should provide an opportunity for locally sponsored service and the department of transportation should assist in this effort.

It is the intent of the legislature to encourage interlocal agreements to ensure passenger-only ferry service is reinstated on routes that the Washington state ferry system eliminates.

PART II
PTBA PASSENGER-ONLY FERRY SERVICE

NEW SECTION. Sec. 201. A new section is added to chapter 36.57A RCW to read as follows:

PTBA AUTHORIZATION FOR PASSENGER-ONLY FERRY SERVICE. A public transportation benefit area having a boundary located on Puget Sound may provide passenger-only ferry service. For the purposes of this chapter and sections 206 and 207 of this act, Puget Sound is considered as extending north as far as the Canadian border and west as far as Port Angeles. Before a benefit area may provide passenger-only ferry service, it must develop a passenger-only ferry investment plan including elements to operate or contract for the operation of passenger-only ferry services, purchase, lease, or rental of ferry vessels and dock facilities for the provision of transit service, and identify other activities necessary to implement the plan. The plan must set forth terminal locations to be served, projected costs of providing services, and revenues to be generated from tolls, locally collected tax revenues, and other revenue sources. The plan must ensure that services provided under the plan are for the benefit of the residents of the benefit area. The benefit area may use any of its powers to carry out this purpose, unless otherwise prohibited by law. In addition, the public transportation benefit area may enter into contracts and agreements to operate passenger-only ferry service and public-private partnerships and design-build, general contractor/construction management, or other alternative procurement process substantially consistent with chapter 39.10 RCW.

NEW SECTION. Sec. 202. A new section is added to chapter 36.57A RCW to read as follows:

TAXES, FEES, AND TOLLS. (1) A public transportation benefit area may, as part of a passenger-only ferry investment plan, recommend some or all of the following revenue sources as provided in this chapter:

- (a) A motor vehicle excise tax, as provided in section 206 of this act;
- (b) A sales and use tax, as provided in section 207 of this act;
- (c) Tolls for passengers and packages and, where applicable, parking; and
- (d) Charges or licensing fees for advertising, leasing space for services to ferry passengers, and other revenue-generating activities.

(2) Taxes may not be imposed without an affirmative vote of the majority of the voters within the boundaries of the area voting on a single ballot proposition to both approve a passenger-only ferry investment plan and to approve taxes to implement the plan. Revenues from these taxes and fees may be used only to implement the plan and must be used for the benefit of the residents of the benefit area. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or charges authorized in this section.

NEW SECTION. Sec. 203. A new section is added to chapter 47.52 RCW to read as follows:

CONVEYANCE OF FERRY VESSELS. The department of transportation may enter into contracts with public transportation benefit areas meeting the requirements of section 201 of this act or county ferry districts to convey passenger-only ferry vessels and other properties associated with passenger-only

ferry service that serve to provide passenger-only ferry service, as full or part consideration for the benefit area or ferry district assuming all future maintenance and operation obligations and costs required to maintain and operate the vessel and facilities. The conveyances must provide that the vessels or properties revert to the department if the vessels are not used for providing passenger-only ferry service.

Sec. 204. RCW 47.60.120 and 1993 c 427 s 1 are each amended to read as follows:

TEN-MILE RULE EXEMPTION. (1) If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters, there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department.

(2) The ten-mile distance in subsection (1) of this section means ten statute miles measured by airline distance. The ten-mile restriction shall be applied by comparing the two end points (termini) of a state ferry crossing to those of a private ferry crossing.

(3) The Washington utilities and transportation commission may, upon written petition of a commercial ferry operator certificated or applying for certification under chapter 81.84 RCW, and upon notice and hearing, grant a waiver from the ten-mile restriction. The waiver must not be detrimental to the public interest. In making a decision to waive the ten-mile restriction, the commission shall consider, but is not limited to, the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. The commission shall act upon a request for a waiver within ninety days after the conclusion of the hearing. A waiver is effective for a period of five years from the date of issuance. At the end of five years the waiver becomes permanent unless appealed within thirty days by the commission on its own motion, the department, or an interested party.

(4) The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

(5) This section does not apply to the operation of passenger-only ferry service by public transportation benefit areas meeting the requirements of section 201 of this act or to the operation of passenger-only ferry service by ferry districts.

Sec. 205. RCW 47.64.090 and 1983 c 15 s 27 are each amended to read as follows:

USE OF STATE FERRY FACILITIES. (1) Except as provided in section 203 of this act and subsection (2) of this section, or as provided in section 303 of

this act and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) If a public transportation benefit area meeting the requirements of section 201 of this act has voter approval to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase passenger-only vessels, related equipment, or terminal space for purposes of loading and unloading the passenger-only ferry. A benefit area or subcontractor of that benefit area that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to the terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable.

(3) If a ferry district is formed under section 301 of this act to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is:

(a) Subject to the terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Subject to a requirement, to be included by the ferry district in any contract with the district's subcontractor, to give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Subject to a requirement, to be included by the ferry district in any contract with the district's subcontractor, that any questions concerning representation of employees for collective bargaining purposes may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

NEW SECTION. Sec. 206. A new section is added to chapter 82.80 RCW to read as follows:

MOTOR VEHICLE EXCISE TAX AUTHORIZED. (1) Public transportation benefit areas authorized to implement passenger-only ferry

service under section 201 of this act whose boundaries (a) are on the Puget Sound, but (b) do not include an area where a regional transit authority has been formed, may submit an authorizing proposition to the voters and, if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding four-tenths of one percent on the value of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing passenger-only ferry service. The tax must be collected only at the time of vehicle license renewal under chapter 46.16 RCW. The tax will be imposed on vehicles previously registered in another state or nation when they are initially registered in this state. The tax will not be imposed at the time of sale by a licensed vehicle dealer. In a county imposing a motor vehicle excise tax surcharge under RCW 81.100.060, the maximum tax rate under this section must be reduced to a rate equal to four-tenths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed under RCW 81.100.060. This rate does not apply to vehicles licensed under RCW 46.16.070 with an unladen weight more than six thousand pounds, or to vehicles licensed under RCW 46.16.079, 46.16.085, or 46.16.090.

(2) The department of licensing shall administer and collect the tax. 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 must be remitted to the custody of the state treasurer for monthly distribution to the public transportation benefit area.

(3) The public transportation benefit area imposing this tax shall delay the effective date at least six months from the date the fee is approved by the qualified voters of the authority area to allow the department of licensing to implement administration and collection of the tax.

(4) Before an authority may impose a tax authorized under this section, the authorization for imposition of the tax must be approved by a majority of the qualified electors of the authority area voting on that issue.

NEW SECTION. Sec. 207. A new section is added to chapter 82.14 RCW to read as follows:

SALES AND USE TAX AUTHORIZATION. Public transportation benefit areas providing passenger-only ferry service as provided in section 201 of this act whose boundaries (1) are on the Puget Sound, but (2) do not include an area where a regional transit authority has been formed, may submit an authorizing proposition to the voters and, if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing passenger-only ferry service.

The tax authorized by this section is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of a taxable event within the taxing district. The maximum rate of the tax must be approved by the voters and may not exceed four-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.

Sec. 208. RCW 82.14.050 and 2002 c 56 s 406 are each amended to read as follows:

ADMINISTRATION AND COLLECTION—LOCAL SALES AND USE TAX ACCOUNT. The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under section 207 of this act, and regional transportation investment districts shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which 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 the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, and regional transportation investment districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, and regional transportation investment districts monthly.

Sec. 209. RCW 36.57A.010 and I983 c 65 s 1 are each amended to read as follows:

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

(1) "Public transportation benefit area" means a municipal corporation of the state of Washington created pursuant to this chapter.

(2) "Public transportation benefit area authority" or "authority" means the legislative body of a public transportation benefit area.

(3) "City" means an incorporated city or town.

(4) "Component city" means an incorporated city or town within a public transportation benefit area.

(5) "City council" means the legislative body of any city or town.

(6) "County legislative authority" means the board of county commissioners or the county council.

(7) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made by the office of financial management.

(8) "Public transportation service" means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems: PROVIDED, That nothing shall prohibit an authority from leasing its buses to private certified carriers or prohibit the authority from providing school bus service. "Public transportation service" includes passenger-only ferry service for those public transportation benefit

areas eligible to provide passenger-only ferry service under section 201 of this act.

(9) "Public transportation improvement conference" or "conference" means the body established pursuant to RCW 36.57A.020 which shall be authorized to establish, subject to the provisions of RCW 36.57A.030, a public transportation benefit area pursuant to the provisions of this chapter.

Sec. 210. RCW 36.57A.100 and 1977 ex.s. c 44 s 4 are each amended to read as follows:

Except in accordance with an agreement made as provided in this section or in accordance with the provisions of RCW 36.57A.090(3) as now or hereafter amended, upon the effective date on which the public transportation benefit area commences to perform the public transportation service, no person or private corporation shall operate a local public passenger transportation service, including passenger-only ferry service, within the public transportation benefit area with the exception of taxis, buses owned or operated by a school district or private school, and buses owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

An agreement may be entered into between the public transportation benefit area authority and any person or corporation legally operating a local public passenger transportation service, including passenger-only ferry service, wholly within or partly within and partly without the public transportation benefit area and on said effective date under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Such agreement shall provide for a periodic review of the terms and conditions contained therein. Where any such local public passenger transportation service, including passenger-only ferry service, will be required to cease to operate within the public transportation benefit area, the public transportation benefit area authority may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, the public transportation benefit area authority shall condemn such assets in the manner and by the same procedure as is or may be provided by law for the condemnation of other properties for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter.

Wherever a privately owned public carrier operates wholly or partly within a public transportation benefit area, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law.

Sec. 211. RCW 81.84.010 and 1993 c 427 s 2 are each amended to read as follows:

(1) No commercial ferry may hereafter operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation. Service authorized by certificates issued before or after July 25, 1993, to a commercial ferry operator shall be exercised by the operator in a manner consistent with the conditions

established in the certificate or tariffs: PROVIDED, That no certificate shall be required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers and/or vehicles, are not more than ten percent of the total gross annual earnings of such vessel: PROVIDED, That nothing herein shall be construed to affect the right of any county public transportation benefit area or other public agency within this state to construct, condemn, purchase, operate, or maintain, itself or by contract, agreement, or lease, with any person, firm, or corporation, ferries or boats across or wharfs at or upon the waters within this state, including rivers and lakes and Puget Sound, provided such operation is not over the same route or between the same districts, being served by a certificate holder without first acquiring the rights granted to the certificate holder under the certificate, nor shall this chapter be construed to affect, amend, or invalidate any contract entered into prior to January 15, 1927, for the operation of ferries or boats upon the waters within this state, which was entered into in good faith by any county with any person, firm, or corporation, except that in case of the operation or maintenance by any county, city, town, port district, or other political subdivision by contract, agreement, or lease with any person, firm, or corporation, of ferries or boats across or wharfs at or upon the waters within this state, including rivers and lakes and Puget Sound, the commission shall have power and authority to regulate rates and services of such operation or maintenance of ferries, boats, or wharfs, to make, fix, alter, or amend said rates, and to regulate service and safety of operations thereof, in the manner and to the same extent as it is empowered to regulate a commercial ferry, notwithstanding the provisions of any act or parts of acts inconsistent herewith.

(2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate, except that the holder of a certificate of public convenience and necessity for passenger-only ferry service in Puget Sound must initiate service within twenty months of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. ~~((However))~~ Except in the case of passenger-only ferry service in Puget Sound, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service.

(3) The commission shall review certificates in existence as of July 25, 1993, where service is not being provided on all or any portion of the route or routes certificated. Based on progress reports required under subsection (2) of this section, the commission may grant an extension beyond that provided in subsection (2) of this section. Such additional extension may not exceed a total of two years.

Sec. 212. RCW 81.84.020 and 1993 c 427 s 3 are each amended to read as follows:

(1) Upon the filing of an application the commission shall give reasonable notice to the department, affected cities ~~((and))~~, counties, and public

transportation benefit areas and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission shall have power after hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require; but the commission shall not have power to grant a certificate to operate between districts and/or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless such existing certificate holder has failed or refused to furnish reasonable and adequate service or has failed to provide the service described in its certificate or tariffs after the time period allowed to initiate service has elapsed: PROVIDED, A certificate shall be granted when it shall appear to the satisfaction of the commission that the commercial ferry was actually operating in good faith over the route for which such certificate shall be sought, on January 15, 1927: PROVIDED, FURTHER, That in case two or more commercial ferries shall upon said date have been operating vessels upon the same route, or between the same districts the commission shall determine after public hearing whether one or more certificates shall issue, and in determining to whom a certificate or certificates shall be issued, the commission shall consider all material facts and circumstances including the prior operation, schedules, and services rendered by either of the ferries, and in case more than one certificate shall issue, the commission shall fix and determine the schedules and services of the ferries to which the certificates are issued to the end that duplication of service be eliminated and public convenience be furthered.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section shall comply with the provisions of RCW 9A.72.085.

(3) Subsection (2) of this section does not apply to an application for a certificate that is pending as of July 25, 1993.

(4) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

(5) Until March 1, 2005, the commission shall not consider an application for passenger-only ferry service serving any county in Puget Sound, unless the public transportation benefit area authority or ferry district serving that county, by resolution, agrees to the application.

Sec. 213. RCW 81.84.060 and 1993 c 427 s 7 are each amended to read as follows:

The commission, upon complaint by an interested party, or upon its own motion after notice and opportunity for hearing, may cancel, revoke, suspend, alter, or amend a certificate issued under this chapter on any of the following grounds:

(1) Failure of the certificate holder to initiate service by the conclusion of the fifth year after the certificate has been granted or by the conclusion of an extension granted under RCW 81.84.010 (2) or (3), if the commission has considered the progress report information required under RCW 81.84.010 (2) or (3);

(2) Failure of a certificate holder for passenger-only ferry service in Puget Sound to initiate service by the conclusion of the twentieth month after the certificate has been granted;

(3) Failure of the certificate holder to file an annual report;

~~((3))~~ (4) The filing by a certificate holder of an annual report that shows no revenue in the previous twelve-month period after service has been initiated;

~~((4))~~ (5) The violation of any provision of this chapter;

~~((5))~~ (6) The violation of or failure to observe the provisions or conditions of the certificate or tariffs;

~~((6))~~ (7) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

~~((7))~~ (8) Failure of a certificate holder to maintain the required insurance coverage in full force and effect; or

~~((8))~~ (9) Failure or refusal to furnish reasonable and adequate service after initiating service.

The commission shall take appropriate action within thirty days upon a complaint by an interested party or of its own finding that a provision of this section has been violated.

**PART III
COUNTY FERRY DISTRICTS**

NEW SECTION. Sec. 301. A new section is added to chapter 36.54 RCW to read as follows:

(1) The legislative authority of a county with a population over one million persons and having a boundary on Puget Sound may adopt an ordinance creating a ferry district in all or a portion of the area of the county, including the area within the corporate limits of any city or town within the county. The ordinance may be adopted only after a public hearing has been held on the creation of a ferry district, and the county legislative authority makes a finding that it is in the public interest to create the district. A ferry district is limited to providing passenger-only ferry service.

(2) A ferry district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(3) A ferry district is a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the

authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(4) The members of the county legislative authority, acting ex officio and independently, shall compose the governing body of any ferry district that is created within the county. The voters of a ferry district must be registered voters residing within the boundaries of the district.

(5) For the purposes of this section, Puget Sound is considered as extending north as far as the Canadian border and west as far as Port Angeles.

NEW SECTION. Sec. 302. A new section is added to chapter 36.54 RCW to read as follows:

A ferry district may construct, purchase, operate, and maintain passenger-only ferries or wharves at any unfordable stream, lake, estuary, or bay within or bordering the ferry district, or between portions of the ferry district, or between the ferry district and other ferry districts, together with all the necessary boats, grounds, roads, approaches, and landings appertaining thereto under the direction and control of the governing body of the ferry district, free or for toll as the governing body determines by resolution.

NEW SECTION. Sec. 303. A new section is added to chapter 36.54 RCW to read as follows:

(1) To carry out the purposes for which ferry districts are created, the governing body of a ferry district may levy each year an ad valorem tax on all taxable property located in the district not to exceed seventy-five cents per thousand dollars of assessed value. The levy must be sufficient for the provision of ferry services as shown to be required by the budget prepared by the governing body of the ferry district.

(2) A tax imposed under this section may be used only for providing passenger-only ferry services, including the purchase, lease, or rental of passenger-only ferry vessels and dock facilities, the operation and maintenance of passenger-only ferry vessels and dock facilities, and related personnel costs.

NEW SECTION. Sec. 304. A new section is added to chapter 36.54 RCW to read as follows:

A ferry district may impose excess levies upon the property included within the district for a one-year period to be used for operating or capital purposes whenever authorized by the electors of the district under RCW 84.52.052 and Article VII, section 2(a) of the state Constitution.

NEW SECTION. Sec. 305. A new section is added to chapter 36.54 RCW to read as follows:

The governing body of the ferry district shall annually prepare a budget of the requirements of each district fund.

NEW SECTION. Sec. 306. A new section is added to chapter 36.54 RCW to read as follows:

At the time of making general tax levies in each year, the county legislative authority of the county in which a ferry district is located shall make the required levies for district purposes against the real and personal property in the district. The tax levies must be a part of the general tax roll and be collected as a part of the general taxes against the property in the district.

NEW SECTION. Sec. 307. A new section is added to chapter 36.54 RCW to read as follows:

(1) The treasurer of the county in which a ferry district is located shall be treasurer of the district. The county treasurer shall receive and disburse ferry district revenues, collect taxes authorized and levied under this chapter, and credit district revenues to the proper fund.

(2) The county treasurer shall establish a ferry district fund, into which must be paid all district revenues, and the county treasurer shall also maintain such special funds as may be created by the governing body of a ferry district, into which the county treasurer shall place all money as the governing body of the district may, by resolution, direct.

(3) The county treasurer shall pay out money received for the account of the ferry district on warrants issued by the county auditor against the proper funds of the district.

(4) All district funds must be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries.

(5) All interest collected on ferry district funds belongs to the district and must be deposited to its credit in the proper district funds.

NEW SECTION. Sec. 308. A new section is added to chapter 36.54 RCW to read as follows:

A ferry district is exempt from the provisions of Title 81 RCW and is not subject to the control of the Washington utilities and transportation commission. It is not necessary for a ferry district to apply for a certificate of public convenience and necessity.

NEW SECTION. Sec. 309. A new section is added to chapter 36.54 RCW to read as follows:

A ferry district formed under this chapter may be dissolved in the manner provided in chapter 53.48 RCW, relating to port districts.

Sec. 310. RCW 84.52.010 and 2002 c 248 s 15 and 2002 c 88 s 7 are each reenacted and amended to read as follows:

Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not

exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under section 303 of this act, RCW 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows: (a) The levy imposed by a ferry district under section 303 of this act must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated; (b) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; ~~((b))~~ (c) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and ~~((e))~~ (d) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

In determining whether the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.050, exceeds the limitations provided in that section, the assessor shall use the hypothetical state levy, as apportioned to the county under RCW 84.48.080, that was computed under RCW 84.48.080 without regard to the reduction under RCW 84.55.012.

Sec. 311. RCW 84.52.043 and 1995 c 99 s 3 are each amended to read as follows:

Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; ~~(and)~~ (f) the portions of levies by metropolitan park districts that

are protected under RCW 84.52.120; and (g) levies imposed by ferry districts under section 303 of this act.

Sec. 312. RCW 84.52.052 and 2002 c 248 s 16 and 2002 c 180 s 1 are each reenacted and amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district except school districts in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. As used in this section, the term "taxing district" means any county, metropolitan park district, park and recreation service area, park and recreation district, water-sewer district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, rural partial-county library district, intercounty rural library district, fire protection district, cemetery district, city, town, transportation benefit district, emergency medical service district with a population density of less than one thousand per square mile, cultural arts, stadium, and convention district, ferry district, or city transportation authority.

Any such taxing district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or 84.55.010 through 84.55.050, when authorized so to do by the voters of such taxing district in the manner set forth in Article VII, section 2(a) of the Constitution of this state at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any such taxing district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

PART IV MISCELLANEOUS

NEW SECTION. Sec. 401. CAPTIONS AND PART HEADINGS NOT LAW. Captions and part headings used in this act are not part of the law.

NEW SECTION. Sec. 402. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 403. 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 by the House March 31, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 84

[Senate Bill 5425]

HIGHER EDUCATION FACILITIES AUTHORITY—OUTSTANDING INDEBTEDNESS

AN ACT Relating to the total outstanding indebtedness of the higher education facilities authority; and amending RCW 28B.07.050.

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

Sec. 1. RCW 28B.07.050 and 1983 c 169 s 5 are each amended to read as follows:

(1) The authority may, from time to time, issue its special obligation bonds in order to carry out the purposes of this chapter and to enable the authority to exercise any of the powers granted to it in this chapter. The bonds shall be issued pursuant to a bond resolution or trust indenture and shall be payable solely out of the special fund or funds created by the authority in the bond resolution or trust indenture. The special fund or funds shall be funded in whole or in part from moneys paid by one or more participants for whose benefit such bonds were issued and from the sources, if any, described in RCW 28B.07.040(9) or from the proceeds of bonds issued by the authority for the purpose of refunding any outstanding bonds of the authority.

(2) The bonds may be secured by:

(a) A first lien against any unexpended proceeds of the bonds;

(b) A first lien against moneys in the special fund or funds created by the authority for their payment;

(c) A first or subordinate lien against the revenue and receipts of the participant or participants which revenue is derived in whole or in part from the project financed by the authority;

(d) A first or subordinate security interest against any real or personal property, tangible or intangible, of the participant or participants, including, but not limited to, the project financed by the authority;

(e) Any other real or personal property, tangible or intangible; or

(f) Any combination of (a) through (e) of this subsection.

Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the moneys and any securities in which the moneys may be invested without authority or trustee possession, and the security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(3) The bonds may be issued as serial bonds or as term bonds or any such combination. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form, either coupon or registered, or both; carry such registration privileges; be made transferable, exchangeable, and interchangeable; be payable in lawful money of the United States of America at such place or places; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time, and at such price as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the chairperson and the authority's duly-

elected secretary or its executive director, and by the trustee if the authority determines to use a trustee. At least one signature shall be manually subscribed. Coupon bonds shall have attached interest coupons bearing the facsimile signatures of the chairperson and the secretary or the executive director.

(4) Any bond resolution, trust indenture, or agreement with a participant relating to bonds issued by the authority or the financing or refinancing made available by the authority may contain provisions, which may be made a part of the contract with the holders or owners of the bonds to be issued, pertaining to the following, among other matters: (a) The security interests granted by the participant to secure repayment of any amounts financed and the performance by the participant of its other obligations in the financing; (b) the security interests granted to the holders or owners of the bonds to secure repayment of the bonds; (c) rentals, fees, and other amounts to be charged, and the sums to be raised in each year through such charges, and the use, investment, and disposition of the sums; (d) the segregation of reserves or sinking funds, and the regulation, investment, and disposition thereof; (e) limitations on the uses of the project; (f) limitations on the purposes to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied; (g) terms pertaining to the issuance of additional parity bonds; (h) terms pertaining to the incurrence of parity debt; (i) the refunding of outstanding bonds; (j) procedures, if any, by which the terms of any contract with bondholders may be amended or abrogated; (k) acts or failures to act which constitute a default by the participant or the authority in their respective obligations and the rights and remedies in the event of a default; (l) the securing of bonds by a pooling of leases whereby the authority may assign its rights, as lessor, and pledge rents under two or more leases with two or more participants, as lessees; (m) terms governing performance by the trustee of its obligation; or (n) such other additional covenants, agreements, and provisions as are deemed necessary, useful, or convenient by the authority for the security of the holders of the bonds.

(5) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to the maturity thereof, and to pay any redemption premium with respect thereto. Bonds issued for such refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee under RCW 28B.07.080 with respect to the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of the bonds to be redeemed.

(6) All bonds and any interest coupons appertaining to the bonds shall be negotiable instruments under Title 62A RCW.

(7) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

(8) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel, or resell the bonds subject to and in accordance with agreements with bondholders.

(9) At no time shall the total outstanding bonded indebtedness of the authority exceed (~~(five hundred million)~~) one billion dollars.

Passed by the Senate March 7, 2003.

Passed by the House April 10, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 85

[Senate Bill 5429]

MOTOR CARRIERS—REGISTRATION

AN ACT Relating to the Performance Registration Information Systems Management Program (PRISM); amending RCW 46.87.020 and 46.87.140; and adding new sections to chapter 46.87 RCW.

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

Sec. 1. RCW 46.87.020 and 1997 c 183 s 2 are each amended to read as follows:

Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact), chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP and the Western Compact, as applicable, shall prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles. For IRP jurisdictions that require the registration of nonmotor vehicles, this term may include trailers, semitrailers, and pole trailers as applicable, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle by the registering jurisdiction under the Western Compact. Under the IRP, it is a certificate of registration issued by the base jurisdiction for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Commercial vehicle" is a term used by the Western Compact and means any vehicle, except recreational vehicles, vehicles displaying restricted plates, and government owned or leased vehicles, that is operated and registered in more than one jurisdiction and is used or maintained for the transportation of persons for hire, compensation, or profit, or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a motor vehicle having a declared gross weight in excess of twenty-six thousand pounds; or

(b) Is a motor vehicle having three or more axles with a declared gross weight in excess of twelve thousand pounds; or

(c) Is a motor vehicle, trailer, pole trailer, or semitrailer used in combination when the gross weight or declared gross weight of the combination exceeds twenty-six thousand pounds combined gross weight. The nonmotor vehicles

mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Although a two-axle motor vehicle, trailer, pole trailer, semitrailer, or any combination of such vehicles with an actual or declared gross weight or declared combined gross weight exceeding twelve thousand pounds but not more than twenty-six thousand is not considered to be a commercial vehicle, at the option of the owner, such vehicles may be considered as "commercial vehicles" for the purpose of proportional registration. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Commercial vehicles include trucks, tractors, truck tractors, road tractors, and buses. Trailers, pole trailers, and semitrailers, will also be considered as commercial vehicles for those jurisdictions who require registration of such vehicles.

(4) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(5) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(6) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

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

(8) "Fleet" means one or more commercial vehicles in the Western Compact and one or more apportionable vehicles in the IRP.

(9) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(10) "IRP" means the International Registration Plan.

(11) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(12) "Motor carrier" means an entity engaged in the transportation of goods or persons. The term includes a for-hire motor carrier, private motor carrier, contract motor carrier, or exempt motor carrier. The term includes a registrant licensed under this chapter, a motor vehicle lessor, and a motor vehicle lessee.

(13) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right

of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

~~((13))~~ (14) "Preceding year" means the period of twelve consecutive months immediately before July 1st of the year immediately before the commencement of the registration or license year for which apportioned registration is sought.

~~((14))~~ (15) "Properly registered," as applied to the place of registration under the provisions of the Western Compact, means:

(a) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from that place of business, and the vehicle has been assigned to that place of business; or

(b) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

In case of doubt or dispute as to the proper place of registration of a commercial vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.

~~((15))~~ (16) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

~~((16))~~ (17) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

~~((17))~~ (18) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

~~((18))~~ (19) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles.

~~((19))~~ (20) "Western Compact" means the Uniform Vehicle Registration, Proration, and Reciprocity Agreement.

Sec. 2. RCW 46.87.140 and 1997 c 183 s 5 are each amended to read as follows:

(1) Any owner engaged in interstate operations of one or more fleets of apportionable or commercial vehicles may, in lieu of registration of the vehicles under chapter 46.16 RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The nonmotor vehicles of Washington-based fleets which are operated in IRP jurisdictions that require registration of such vehicles may be proportionally registered for operation in those jurisdictions as herein provided. The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet. Motor vehicles and nonpower units shall be placed in separate fleets.

(b) If registering under the provisions of the IRP, the registrant shall also indicate member jurisdictions in which registration is desired and furnish such other information as those member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(d) The USDOT number issued to the registrant and the USDOT number of the motor carrier responsible for the safety of the vehicle, if different.

(e) A completed Motor Carrier Identification Report (MCS-150) at the time of fleet renewal or at the time of vehicle registration, if required by the department.

(f) The Taxpayer Identification Number of the registrant and the motor carrier responsible for the safety of the vehicle, if different.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

Washington-based nonmotor vehicles shall normally be fully licensed under the provisions of chapter 46.16 RCW. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the applicable vehicles may be considered as apportionable vehicles for the purpose of registration in those jurisdictions and this state. The prorate percentage for which registration fees and taxes were paid to such jurisdictions may be credited toward the one hundred percent of registration fees and taxes due this state for full licensing. Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.16.070, 46.16.085, and 82.38.075, ((and 82.44.020,)) as applicable. If, during the registration period, the lessor of an apportioned vehicle changes and the vehicle remains in the fleet of the registrant, the department shall only charge those fees prescribed for the issuance of new apportioned license plates, validation tabs, and cab card.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent. Fees and taxes for nonmotor vehicles being prorated will be calculated as indicated in (b) of this subsection.

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) Add the total fees and taxes determined in (d) of this subsection for each vehicle listed on the application. Assuming the fees and taxes calculated were

for Washington, this would be the amount due and payable for the application under the provisions of the Western Compact. Under the provisions of the IRP, the amount due and payable for the application would be the sum of the fees and taxes referred to in (d) of this subsection, calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter.

NEW SECTION. Sec. 3. A new section is added to chapter 46.87 RCW to read as follows:

The department shall refuse to register a vehicle under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the Federal Motor Carrier Safety Administration.

NEW SECTION. Sec. 4. A new section is added to chapter 46.87 RCW to read as follows:

The department shall suspend or revoke the registration of a vehicle registered under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the Federal Motor Carrier Safety Administration.

Passed by the Senate March 16, 2003.

Passed by the House April 10, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 86

[Substitute Senate Bill 5452]

CHECK CASHERS

AN ACT Relating to check cashers and sellers; amending RCW 31.45.010, 31.45.020, 31.45.030, 31.45.040, 31.45.050, 31.45.060, 31.45.070, 31.45.073, 31.45.077, 31.45.090, 31.45.100, 31.45.110, and 31.45.120; adding new sections to chapter 31.45 RCW; repealing RCW 31.45.170; and providing an effective date.

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

Sec. 1. RCW 31.45.010 and 1995 c 18 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) "Applicant" means a person that files an application for a license under this chapter, including the applicant's sole proprietor, owners, directors, officers, partners, members, and controlling persons.

(2) "Borrower" means a natural person who receives a small loan.

(3) "Business day" means any day that the licensee is open for business in at least one physical location.

(4) "Check" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

(5) "Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

((2)) (6) "Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of or selling checks, drafts, money orders, or other commercial paper serving the same purpose.

((3)) (7) "Collateral" means the same as defined in chapter 62A.9A RCW.

(8) "Controlling person" means a person owning or controlling ten percent or more of the total outstanding shares of the applicant or licensee, if the applicant or licensee is a corporation, and a member who owns ten percent or more of a limited liability company or limited liability partnership.

(9) "Default" means the borrower's failure to repay the small loan in compliance with the terms contained in the small loan agreement or note or failure to make payments in compliance with a loan payment plan.

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

(11) "Financial institution" means a commercial bank, savings bank, savings and loan association, or credit union.

(12) "Licensee" means a check casher or seller licensed by the director to engage in business in accordance with this chapter. For purposes of the enforcement powers of this chapter, including the power to issue cease and desist orders under RCW 31.45.110, "licensee" also means a check casher or seller who fails to obtain the license required by this chapter.

((4)) (13) "Origination date" means the date upon which the borrower and the licensee initiate a small loan transaction.

(14) "Outstanding principal balance" of a small loan means any of the principal amount that has not been paid by the borrower.

(15) "Paid" means that moment in time when the licensee deposits the borrower's check or accepts cash for the full amount owing on a valid small loan.

(16) "Person" means an individual, partnership, association, limited liability company, limited liability partnership, trust, corporation, and any other legal entity.

(17) "Principal" means the loan proceeds advanced for the benefit of the borrower in a small loan, excluding any fee or interest charge.

(18) "Rescission" means annulling the loan contract and, with respect to the small loan contract, returning the borrower and the licensee to their financial condition prior to the origination date of the loan.

(19) "Small loan" means a loan of up to ~~((five hundred dollars for a period of thirty one days or less))~~ the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

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

(20) "Successive loans" means a series of loans made by the same licensee to the same borrower in such a manner that no more than three business days

separate the termination date of any one loan and the origination date of any other loan in the series.

(21) "Termination date" means the date upon which payment for the small loan transaction is due or paid to the licensee, whichever occurs first.

(22) "Total of payments" means the principal amount of the small loan plus all fees or interest charged on the loan.

(23) "Trade secret" means the same as defined in RCW 19.108.010.

Sec. 2. RCW 31.45.020 and 1994 c 92 s 275 are each amended to read as follows:

(1) This chapter does not apply to:

(a) Any ~~((bank, trust company, savings bank, savings and loan association, or credit union))~~ financial institution or trust company authorized to do business in Washington;

(b) The cashing of checks, drafts, or money orders by any ~~((corporation, partnership, association, or))~~ person who cashes checks, drafts, or money orders as a convenience, as a minor part of its customary business, and not for profit;

(c) The issuance or sale of checks, drafts, or money orders by any corporation, partnership, or association that has a net worth of not less than three million dollars as shown by audited financial statements; and

(d) The issuance or sale of checks, drafts, money orders, or other commercial paper serving the same purpose by any agent of a corporation, partnership, or association described in (c) of this subsection.

(2) Upon application to the director, the director may exempt a ~~((corporation, partnership, association, or other))~~ person from any or all provisions of this chapter upon a finding by the director that although not otherwise exempt under this section, the applicant is not primarily engaged in the business of cashing or selling checks and a total or partial exemption would not be detrimental to the public.

Sec. 3. RCW 31.45.030 and 2001 c 177 s 11 are each amended to read as follows:

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

(2) Each application for a license shall be in writing in a form prescribed by the director and shall contain the following information:

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

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller; and

(d) Such other data, financial statements, and pertinent information as the director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant, and any trade secret as defined in

RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the director. Such fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the director. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

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

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

(d) Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

(f) Such security may be sold by the director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the director. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the director additional security sufficient to meet the amount required by the director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter.

Sec. 4. RCW 31.45.040 and 1996 c 13 s 1 are each amended to read as follows:

(1) The director shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness

of the applicant. The director shall issue the applicant a license to engage in the business of cashing or selling checks, or both, or a small loan endorsement, if the director determines to his or her satisfaction that:

(a) The applicant has satisfied the requirements of RCW 31.45.030;

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

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

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

(3) ~~((No))~~ A license or small loan endorsement may not be issued to an applicant ~~((whose license to conduct business under this chapter had been revoked by the director within the twelve-month period preceding the application))~~:

(a) Whose license to conduct business under this chapter, or any similar statute in any other jurisdiction, has been suspended or revoked within five years of the filing of the present application;

(b) Who has been banned from the industry by an administrative order issued by the director or the director's designee, for the period specified in the administrative order; or

(c) When any person who is a sole proprietor, owner, director, officer, partner, agent, or controlling person of the applicant has been banned from the industry in an administrative order issued by the director, for the period specified in the administrative order.

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

(5) A license or small loan endorsement issued in accordance with this chapter remains in force and effect until surrendered, suspended, or revoked, or until the license expires as a result of nonpayment of the annual assessment fee.

Sec. 5. RCW 31.45.050 and 2001 c 177 s 12 are each amended to read as follows:

(1) Each applicant and licensee shall pay to the director an investigation or examination fee as established in rule and an annual assessment fee for the coming year in an amount determined by rule ~~((of the director))~~ as necessary to cover the operation of the program. The annual assessment fee is due upon the annual assessment fee due date as established in rule. Nonpayment of the annual assessment fee may result in expiration of the license as provided in subsection (2) of this section. In establishing the fees, the director shall differentiate between check cashing and check selling and making small loans, and consider

at least the volume of business, level of risk, and potential harm to the public related to each activity. The fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(2) If a licensee does not pay its annual assessment fee by the annual assessment fee due date as specified in rule, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment fee as established in rule by the director. The licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after the annual assessment fee due date, unless the department is not open for business on that date, in which case the licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring day that the department is open for business. If the payment of both the annual assessment fee and the late fee does not arrive prior to such time and date, then the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment fee due date. The director or the director's designee may reinstate the license if, within twenty days after the effective date of expiration, the licensee:

(a) Pays both the annual assessment fee and the late fee; and

(b) Attests under penalty of perjury that it did not engage in conduct requiring a license under this chapter during the period its license was expired, as confirmed by an investigation by the director or the director's designee.

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

Sec. 6. RCW 31.45.060 and 1994 c 92 s 279 are each amended to read as follows:

(1) A schedule of the fees and the charges for the cashing and selling of checks, drafts, money orders, or other commercial paper serving the same purpose shall be conspicuously and continuously posted in every location licensed under this chapter. The licensee shall provide to its customer a receipt for each transaction. The receipt must include the name of the licensee, the type and amount of the transaction, and the fee or fees charged for the transaction.

(2) Each licensee shall keep and maintain such business books, accounts, and records as the director may require to fulfill the purposes of this chapter. Every licensee shall preserve such books, accounts, and records as required in rule by the director for at least two years from the completion of the transaction. Records may be maintained on an electronic, magnetic, optical, or other storage media. However, the licensee must maintain the necessary technology to permit access to the records by the department for the period required under this chapter.

(3) A check, draft, or money order sold by a licensee shall be drawn on an account of a licensee maintained ~~((at a bank, savings bank, or savings and loan association))~~ in a federally insured financial institution authorized to do business in the state of Washington.

Sec. 7. RCW 31.45.070 and 1995 c 18 s 7 are each amended to read as follows:

(1) No licensee may engage in a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks, or other evidences of debt on the same premises where a check cashing or selling business is conducted, unless the licensee:

(a) Is conducting the activities of pawnbroker as defined in RCW 19.60.010;
 (b) Is a properly licensed consumer loan company under chapter 31.04 RCW;

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

(d) Has a small loan endorsement.

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

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

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

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

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

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

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

Sec. 8. RCW 31.45.073 and 1995 c 18 s 2 are each amended to read as follows:

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

(2) The termination date of a small loan may not exceed the origination date of that same small loan by more than forty-five days, including weekends and holidays, unless the term of the loan is extended by agreement of both the borrower and the licensee and no additional fee or interest is charged. The maximum principal amount of any small loan, or the outstanding principal

balances of all small loans made by a licensee to a single borrower at any one time, may not exceed seven hundred dollars.

(3) A licensee that has obtained the required small loan endorsement may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal ((amount borrowed)). If the principal exceeds five hundred dollars, a licensee may charge interest or fees not to exceed in the aggregate ten percent of that portion of the principal in excess of five hundred dollars. If a licensee makes more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, the licensee may charge interest or fees not to exceed in the aggregate ten percent on that portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars. The director may determine by rule which fees, if any, are not subject to the ((fifteen percent limitation)) interest or fee limitations described in this section. It is a violation of this chapter for any licensee to knowingly loan to a single borrower at any one time, in a single loan or in the aggregate, more than the maximum principal amount described in this section.

((3)) (4) In connection with making a small loan, a licensee may advance moneys on the security of a postdated check ((or draft provided the time period between the date the loan is granted and the date of the postdated check does not exceed thirty one days. A licensee shall deposit all postdated checks or drafts as soon as practicable after the date of the check or draft has passed)). The licensee may not accept any other property, title to property, or other evidence of ownership of property as collateral for a small loan. The licensee may accept only one postdated check per loan as security for the loan. A licensee may permit a borrower to redeem a postdated check with a payment of cash or the equivalent of cash. The licensee may disburse the proceeds of a small loan in cash, in the form of a check, or in the form of the electronic equivalent of cash or a check.

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

Sec. 9. RCW 31.45.077 and 2001 c 177 s 13 are each amended to read as follows:

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

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

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

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

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

(2) Any information in the application regarding the licensee's personal residential address or telephone number, and any trade secrets of the licensee as defined under RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.17 RCW.

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

NEW SECTION. Sec. 10. A new section is added to chapter 31.45 RCW to read as follows:

A person may not engage in the business of making small loans as an agent for a licensee or exempt entity without first obtaining a small loan endorsement to a check casher or check seller license under this chapter. An agent of a licensee or exempt entity engaged in the business of making small loans is subject to this chapter. To the extent that federal law preempts the applicability of any part of this chapter, all other parts of this chapter remain in effect.

NEW SECTION. Sec. 11. A new section is added to chapter 31.45 RCW to read as follows:

A licensee shall comply with all applicable state and federal laws when collecting a delinquent small loan. A licensee may charge a one-time fee as determined in rule by the director to any borrower in default on any loan or loans where the borrower's check has been returned unpaid by the financial institution upon which it was drawn. A licensee may take civil action under Title 62A RCW to collect upon a check that has been dishonored. If the licensee takes civil action, a licensee may charge the borrower the cost of collection as allowed under RCW 62A.3-515, but may not collect attorneys' fees or any other interest or damages as allowed under RCW 62A.3-515. A licensee may not threaten criminal prosecution as a method of collecting a delinquent small loan. If a dishonored check is assigned to any third party for collection, this section applies to the third party for the collection of the dishonored check.

NEW SECTION. Sec. 12. A new section is added to chapter 31.45 RCW to read as follows:

(1) A licensee and borrower may agree to a payment plan for a small loan at any time. After four successive loans and prior to default upon the last loan, each borrower may convert their small loan to a payment plan. Each agreement for a loan payment plan must be in writing and acknowledged by both the borrower and the licensee. The licensee may charge the borrower, at the time both parties enter into the payment plan, a one-time fee for the payment plan in an amount up to the fee or interest on the outstanding principal of the loan as allowed under RCW 31.45.073(3). The licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the small loan into a payment plan. This payment plan must provide for the payment of the total of payments due on the small loan over a period not less than sixty days in three or more payments, unless the borrower and licensee agree to a shorter payment period. The borrower may pay the total of payments at any time. The licensee may not charge any penalty, fee, or charge to the borrower for prepayment of the loan payment plan by the borrower. Each

licensee shall conspicuously disclose to each borrower in the small loan agreement or small loan note that the borrower has access to such a payment plan after four successive loans. A licensee's violation of such a payment plan constitutes a violation of this chapter.

(2) The licensee may take postdated checks at the initiation of the payment plan for the payments agreed to under the plan. If any check accepted by the licensee as payment under the payment plan is dishonored, the licensee may not charge the borrower any fee for the dishonored check.

(3) If the borrower defaults on the payment plan, the licensee may initiate action to collect the total of payments under section 11 of this act. The licensee may charge the borrower a one-time payment plan default fee of twenty-five dollars.

(4) If the licensee enters into a payment plan with the borrower through an accredited third party, with certified credit counselors, that is representing the borrower, the licensee's failure to comply with the terms of that payment plan constitutes a violation of this chapter.

NEW SECTION. Sec. 13. A new section is added to chapter 31.45 RCW to read as follows:

A borrower may rescind a loan, on or before the close of business on the next day of business at the location where the loan was originated, by returning the principal in cash or the original check disbursed by the licensee to fund the small loan. The licensee may not charge the borrower for rescinding the loan and shall return to the borrower any postdated check taken as security for the loan or any electronic equivalent. The licensee shall conspicuously disclose to the borrower this right of rescission in writing in the small loan agreement or small loan note.

NEW SECTION. Sec. 14. A new section is added to chapter 31.45 RCW to read as follows:

(1) When advertising the availability of small loans, if a licensee includes in an advertisement the fee or interest rate charged by the licensee for a small loan, then the licensee shall also disclose the annual percentage rate resulting from this fee or interest rate.

(2) When advertising the availability of small loans, compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 constitutes compliance with subsection (1) of this section.

(3) When making a small loan, each licensee shall disclose to the borrower the terms of the small loan, including the principal amount of the small loan, the total of payments of the small loan, the fee or interest rate charged by the licensee on the small loan, and the annual percentage rate resulting from this fee or interest rate.

(4) When making a small loan, disclosure of the terms of the small loan in compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 constitutes compliance with subsection (3) of this section.

Sec. 15. RCW 31.45.090 and 1994 c 92 s 282 are each amended to read as follows:

(1) Each licensee shall submit to the director, in a form approved by the director, a report containing financial statements covering the calendar year or, if the licensee has an established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the director may require. Any information provided by a licensee in an annual report that constitutes a trade secret under chapter 19.108 RCW is exempt from disclosure under chapter 42.17 RCW, unless aggregated with information supplied by other licensees in such a manner that the licensee's individual information is not identifiable. Any information provided by the licensee that allows identification of the licensee may only be used for purposes reasonably related to the regulation of licensees to ensure compliance with this chapter.

(2) A licensee whose license has been suspended or revoked shall submit to the director, at the licensee's expense, within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The director shall adopt rules specifying the form and content of such audit reports and may require additional reporting as is necessary for the director to ensure compliance with this chapter.

Sec. 16. RCW 31.45.100 and 1994 c 92 s 283 are each amended to read as follows:

The director or the director's designee may at any time examine and investigate the business and examine the books, accounts, records, and files, or other information, wherever located, of any licensee or person who the director has reason to believe is engaging in the business governed by this chapter. For these purposes, the director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of the investigation. The director or the director's designee may require the production of original books, accounts, records, files, or other information, or may make copies of such original books, accounts, records, files, or other information. The director or the director's designee may issue a subpoena or subpoena duces tecum requiring attendance and testimony, or the production of the books, accounts, records, files, or other information. The director shall collect from the licensee(;) the actual cost of the examination or investigation.

Sec. 17. RCW 31.45.110 and 1994 c 92 s 284 are each amended to read as follows:

(1) The director may issue and serve upon a licensee or applicant a ~~((notice))~~ statement of charges if, in the opinion of the director, any licensee or applicant:

(a) Is engaging or has engaged in an unsafe or unsound financial practice in conducting the business of a check seller governed by this chapter;

(b) Is violating or has violated ~~((the law, rule))~~ this chapter, including rules, orders, or subpoenas, any rule adopted under this act, any order issued under this act, any subpoena issued under this act, or any condition imposed in writing by the director or the director's designee in connection with the granting of any

application or other request by the licensee or any written agreement made with the director; ~~((or))~~

(c) ~~Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause;~~

(d) Obtains a license by means of fraud, misrepresentation, concealment, or through mistake or inadvertence of the director;

(e) Provides false statements or omissions of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(f) Fails to pay a fee required by the director or maintain the required bond;

(g) Commits a crime against the laws of the state of Washington or any other state or government involving moral turpitude, financial misconduct, or dishonest dealings;

(h) Knowingly commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person relying upon the word, representation, or conduct acts to his or her injury or damage;

(i) Converts any money or its equivalent to his or her own use or to the use of his or her principal or of any other person;

(j) Fails, upon demand by the director or the director's designee, 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 designee;

(k) Commits any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction regarding that act is conclusive evidence in any hearing under this chapter; or

(l) Commits an act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury and loss to the public.

~~(2) The ((notice)) statement of charges shall ((contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the director at the request of the licensee)) be issued under chapter 34.05 RCW. The director or the director's designee may impose the following sanctions against any licensee or applicant, or any director, officer, sole proprietor, partner, controlling person, or employee of a licensee or applicant:~~

(a) Deny, revoke, suspend, or condition the license;

(b) Order the licensee to cease and desist from practices in violation of this chapter or practices that constitute unsafe and unsound financial practices in the sale of checks;

(c) Impose a fine not to exceed one hundred dollars per day for each day's violation of this chapter;

(d) Order restitution to borrowers or other parties damaged by the licensee's violation of this chapter or take other affirmative action as necessary to comply with this chapter; and

(e) Remove from office or ban from participation in the affairs of any licensee any director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

(3) The proceedings to impose the sanctions described in subsection (2) of this section, including any hearing or appeal of the statement of charges, are governed by chapter 34.05 RCW.

Unless the licensee personally appears at the hearing or is represented by a duly authorized representative, the licensee is deemed to have consented to the ~~((issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the director finds that any violation or practice specified in the notice of charges has been established, the director may issue and serve upon the licensee an order to cease and desist from the violation or practice. The order may require the licensee and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the licensee to take affirmative action to correct the conditions resulting from the violation or practice.~~

~~(3) A cease and desist order becomes effective upon the expiration of ten days after the service of the order upon the licensee concerned, except that a cease and desist order issued upon consent becomes effective at the time specified in the order and remains effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court)) statement of charges and the sanctions imposed in the statement of charges.~~

Sec. 18. RCW 31.45.120 and 1994 c 92 s 285 are each amended to read as follows:

Whenever the director determines that the acts specified in RCW 31.45.110 or their continuation is likely to cause insolvency or substantial injury to the public, the director may also issue a temporary cease and desist order requiring the licensee to cease and desist from the violation or practice. The order becomes effective upon service upon the licensee and remains effective unless set aside, limited, or suspended by a court under RCW 31.45.130 pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of the cease and desist order issued against the licensee under RCW 31.45.110.

NEW SECTION. **Sec. 19.** RCW 31.45.170 (Violation—Penalty) and 1994 c 92 s 289 & 1991 c 355 s 17 are each repealed.

NEW SECTION. **Sec. 20.** Section 12 of this act takes effect October 1, 2003.

Passed by the Senate February 26, 2003.

Passed by the House April 10, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 87

[Substitute Senate Bill 5561]

UCC ARTICLE 9A—ASSIGNMENTS

AN ACT Relating to restrictions on assignments under Article 9A of the uniform commercial code; amending RCW 62A.9A-406 and 62A.9A-408; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 62A.9A-406 and 2001 c 32 s 34 are each amended to read as follows:

(a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through ~~((+))~~ (j) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this section and RCW 62A.2A-303 and 62A.9A-407, and subject to subsections (h) and (j) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or

remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) [Reserved]

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j)(1) **Inapplicability of subsection (d) of this section to certain transactions.** After July 1, 2003, subsection (d) of this section does not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW.

Sec. 2. RCW 62A.9A-408 and 2000 c 250 s 9A-408 are each amended to read as follows:

(a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) of this section to sales of certain rights to payment.** Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) **Legal restrictions generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security

interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c) of this section. To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e)(1) Inapplicability of subsections (a) and (c) of this section to certain payment intangibles. After July 1, 2003, subsections (a) and (c) of this section do not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW.

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 July 1, 2003.

Passed by the Senate March 11, 2003.

Passed by the House April 10, 2003.
Approved by the Governor April 23, 2003.
Filed in Office of Secretary of State April 23, 2003.

CHAPTER 88

[Senate Bill 5651]

URBAN INDUSTRIAL LAND BANKS

AN ACT Relating to urban industrial land banks in counties with low population densities; and amending RCW 36.70A.367.

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

Sec. 1. RCW 36.70A.367 and 2002 c 306 s 1 are each amended to read as follows:

(1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (9) or (10) of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

(2) A master planned location for major industrial developments outside an urban growth area may be included in the urban industrial land bank for the county if criteria including, but not limited to, the following are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas;

(h) An inventory of developable land has been conducted as provided in RCW 36.70A.365;

(i) An interlocal agreement related to infrastructure cost sharing and revenue sharing between the county and interested cities are [is] established;

(j) Provisions are established for determining the availability of alternate sites within urban growth areas and the long-term annexation feasibility of land sites outside of urban growth areas; and

(k) Development regulations require the industrial land bank site to be used primarily for locating industrial and manufacturing businesses and specify that the gross floor area of all commercial and service buildings or facilities locating within the industrial land bank shall not exceed ten percent of the total gross floor area of buildings or facilities in the industrial land bank. The commercial and service businesses operated within the ten percent gross floor area limit shall

be necessary to the primary industrial or manufacturing businesses within the industrial land bank. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site and as an adjunct to the industry to attract and retain a quality work force and to further other public objectives, such as trip reduction. Such uses would not be promoted to attract additional clientele from the surrounding area. The commercial and service businesses should be established concurrently with or subsequent to the industrial or manufacturing businesses.

(3) In selecting master planned locations for inclusion in the urban industrial land bank, priority shall be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(4) Final approval of inclusion of a master planned location in the urban industrial land bank shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, except that RCW 36.70A.130(2) does not apply so that inclusion or exclusion of master planned locations may be considered at any time.

(5) Once a master planned location has been included in the urban industrial land bank, manufacturing and industrial businesses that qualify as major industrial development under RCW 36.70A.365 may be located there.

(6) Nothing in this section may be construed to alter the requirements for a county to comply with chapter 43.21C RCW.

(7)(a) The authority of a county meeting the criteria of subsection (9) of this section to engage in the process of including or excluding master planned locations from the urban industrial land bank shall terminate on December 31, 2007. However, any location included in the urban industrial land bank on or before December 31, 2007, shall be available for major industrial development as long as the criteria of subsection (2) of this section are met. A county that has established or proposes to establish an industrial land bank pursuant to this section shall review the need for an industrial land bank within the county, including a review of the availability of land for industrial and manufacturing uses within the urban growth area, during the review and evaluation of comprehensive plans and development regulations required by RCW 36.70A.130.

(b) The authority of a county meeting the criteria of subsection (10) of this section to engage in the process of including or excluding master planned locations from the urban industrial land bank terminates on December 31, 2002. However, any location included in the urban industrial land bank on December 31, 2002, shall be available for major industrial development as long as the criteria of subsection (2) of this section are met.

(8) For the purposes of this section, "major industrial development" means a master planned location suitable for manufacturing or industrial businesses that:

- (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or
- (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent; or
- (c) requires a location with characteristics such as proximity to transportation facilities or related industries such that there is no suitable location in an urban growth area.

The major industrial development may not be for the purpose of retail commercial development or multitenant office parks.

(9) This section and the termination date specified in subsection (7)(a) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(i) Is bordered by the Pacific Ocean;

(ii) Is located in the Interstate 5 or Interstate 90 corridor; or

(iii) Is bordered by Hood Canal;

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia river to the east; or

(e) Has an average ~~((level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent))~~ population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal.

(10) This section and the termination date specified in subsection (7)(b) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than forty thousand but fewer than eighty thousand;

(b) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(c) Is located in the Interstate 5 or Interstate 90 corridor.

(11) Any location included in an industrial land bank pursuant to section 2, chapter 289, Laws of 1998, section 1, chapter 402, Laws of 1997, and section 2, chapter 167, Laws of 1996 shall remain available for major industrial development according to this section as long as the criteria of subsection (2) of this section continue to be satisfied.

Passed by the Senate March 16, 2003.

Passed by the House April 10, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 89

[Senate Bill 5720]

CREDIT CARDS—USER IDENTIFICATION

AN ACT Relating to identifying users of credit and debit cards; adding a new section to chapter 19.192 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 financial fraud is too common, and that it threatens the safety and well-being of the public by driving up the costs of goods and services and unduly burdening the law enforcement community. Further, the legislature finds that financial fraud can be deterred by allowing retailers to verify the identity of persons who seek to pay for goods or services with a credit or debit card. Finally, the legislature finds that some retailers are deterred from verifying their customers' identity by contractual arrangements with credit card issuers. The legislature declares that such contracts violate the public policy that all citizens should be able to take reasonable steps to prevent themselves and their communities from falling victim to crime.

NEW SECTION. Sec. 2. A new section is added to chapter 19.192 RCW to read as follows:

(1) Any provision of a contract between a merchant or retailer and a credit or debit card issuer, financial institution, or other person that prohibits the merchant or retailer from verifying the identity of a customer who offers to pay for goods or services with a credit or debit card by requiring or requesting that the customer present additional identification is void for violation of public policy.

(2) Nothing in this section shall be interpreted as: (a) Compelling merchants or retailers to verify identification; or (b) interfering with the ability of the owner or manager of a retail store or chain to make and enforce its own policies regarding verification of identification.

Passed by the Senate March 6, 2003.

Passed by the House April 10, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 90

[Substitute Senate Bill 5780]

MUNICIPAL CRIMINAL JUSTICE ASSISTANCE ACCOUNT

AN ACT Relating to the municipal criminal justice assistance account; amending RCW 82.14.330; and repealing RCW 82.14.335.

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

Sec. 1. RCW 82.14.330 and 1998 c 321 s 13 are each amended to read as follows:

(1) Beginning in fiscal year 2000, the state treasurer shall transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year. The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed to the cities of the state as follows:

(a) Twenty percent appropriated for distribution shall be distributed to cities with a three-year average violent crime rate for each one thousand in population in excess of one hundred fifty percent of the statewide three-year average violent crime rate for each one thousand in population. The three-year average violent crime rate shall be calculated using the violent crime rates for each of the preceding three years from the annual reports on crime in Washington state as published by the Washington association of sheriffs and police chiefs. Moneys shall be distributed under this subsection (1)(a) ratably based on population as last determined by the office of financial management, but no city may receive more than one dollar per capita. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(b) Sixteen percent shall be distributed to cities ratably based on population as last determined by the office of financial management, but no city may receive less than one thousand dollars.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection shall be distributed at such times as distributions are made under RCW 82.44.150.

Moneys distributed under this subsection shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(2) In addition to the distributions under subsection (1) of this section:

(a) ~~((Fourteen percent shall be distributed to cities that have initiated innovative law enforcement strategies, including alternative sentencing and crime prevention programs. No city may receive more than one dollar per capita under this subsection (2)(a)))~~ Ten percent shall be distributed on a per capita basis to cities that contract with another governmental agency for the majority of the city's law enforcement services. Cities that subsequently qualify for this distribution shall notify the department of community, trade, and economic development by November 30th for the upcoming calendar year. The department of community, trade, and economic development shall provide a list of eligible cities to the state treasurer by December 31st. The state treasurer shall modify the distribution of these funds in the following year. Cities have the responsibility to notify the department of community, trade, and economic development of any changes regarding these contractual relationships.

Adjustments in the distribution formula to add or delete cities may be made only for the upcoming calendar year; no adjustments may be made retroactively.

~~(b) ((Twenty percent shall be distributed to cities that have initiated programs to help at-risk children or child abuse victim response programs. No city may receive more than fifty cents per capita under this subsection (2)(b):~~

~~(c) Twenty percent shall be distributed to cities that have initiated programs designed to reduce the level of domestic violence within their jurisdictions or to provide counseling for domestic violence victims. No city may receive more than fifty cents per capita under this subsection (2)(c):~~

~~(d) Ten percent shall be distributed to cities that contract with another governmental agency for a majority of the city's law enforcement services.~~

~~Moneys distributed under this subsection shall be distributed to those cities that submit funding requests under this subsection to the department of community, trade, and economic development based on criteria developed under RCW 82.14.335. Allocation of funds shall be in proportion to the population of qualified jurisdictions, but the distribution to a city shall not exceed the amount of funds requested. Cities shall submit requests for program funding to the department of community, trade, and economic development by November 1 of each year for funding the following year. The department shall certify to the state treasurer the cities eligible for funding under this subsection and the amount of each allocation)) The remaining fifty-four percent shall be distributed to cities and towns by the state treasurer on a per capita basis. These funds shall be used for: (i) Innovative law enforcement strategies; (ii) programs to help at-risk children or child abuse victim response programs; and (iii) programs designed to reduce the level of domestic violence or to provide counseling for domestic violence victims.~~

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed at the times as distributions are made under RCW 82.44.150. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

If a city is found by the state auditor to have expended funds received under this subsection in a manner that does not comply with the criteria under which the moneys were received, the city shall be ineligible to receive future distributions under this subsection until the use of the moneys are justified to the satisfaction of the director or are repaid to the state general fund. ~~((The director may allow noncomplying use of moneys received under this subsection upon a showing of hardship or other emergent need.))~~

(3) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(4) Not more than five percent of the funds deposited to the municipal criminal justice assistance account shall be available for appropriations for

enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund.

NEW SECTION. Sec. 2. RCW 82.14.335 (Grant criteria for distributions under RCW 82.14.330(2)) and 1995 c 399 s 213 & 1993 sp.s. c 21 s 4 are each repealed.

Passed by the Senate March 13, 2003.

Passed by the House April 10, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 91

[Engrossed Substitute Senate Bill 6074]

VESSELS

AN ACT Relating to vessels; amending RCW 47.64.090 and 88.40.020; adding a new section to chapter 41.56 RCW; providing a contingent effective date; and declaring an emergency.

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

Sec. 1. RCW 47.64.090 and 2003 c . . . (ESHB 1853) s 205 are each amended to read as follows:

USE OF STATE FERRY FACILITIES. (1) Except as provided in section 203 (~~(of this act)~~), chapter . . . (ESHB 1853), Laws of 2003 and subsection (2) of this section, or as provided in section 303 (~~(of this act)~~), chapter . . . (ESHB 1853), Laws of 2003 and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) If a public transportation benefit area meeting the requirements of section 201 (~~(of this act)~~), chapter . . . (ESHB 1853), Laws of 2003 has voter approval to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase passenger-only vessels, related equipment, or terminal space for purposes of loading and unloading the passenger-only ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A benefit area or subcontractor of that benefit area that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(3) If a ferry district is formed under section 301 (~~of this act~~), chapter . . . (ESHB 1853), Laws of 2003 to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) (~~Subject to~~) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) (~~Subject to~~) Unless otherwise prohibited by federal or state law, a requirement(~~(, to be included by)~~) that the ferry district (~~(it)~~) and any contract with (~~the district's~~) its subcontractors, (~~to~~) give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) (~~Subject to~~) Unless otherwise prohibited by federal or state law, a requirement(~~(, to be included by)~~) that the ferry district (~~(it)~~) and any contract with (~~the district's~~) its subcontractors, (~~that~~) on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

NEW SECTION. Sec. 2. A new section is added to chapter 41.56 RCW to read as follows:

In addition to the entities listed in RCW 41.56.020, this chapter does apply to:

- (1) Public employees of public transportation benefit areas providing passenger-only ferry service as provided in RCW 47.64.090; and
- (2) Public employees of ferry districts providing passenger-only ferry service as provided in RCW 47.64.090.

Sec. 3. RCW 88.40.020 and 2000 c 69 s 31 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))~~ five million dollars, or ~~((one))~~ three hundred ~~((fifty))~~ dollars per gross ton of such vessel.

(2)(a) Except as provided in (b) or (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. The amount of financial responsibility required under this subsection is one billion dollars after January 1, 2004.

(b) The director by rule may establish a lesser standard of financial responsibility for ~~((barges))~~ tank vessels of three hundred gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the ~~((barge))~~ tank vessel is capable of carrying. The director shall not set the standard for ~~((barges))~~ tank vessels 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 director may require the owner or operator of a tank vessel to prove membership in such an organization.

(3)(a) 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))~~ at least three hundred million dollars. However, a passenger vessel that transports passengers and vehicles between Washington state and a foreign country shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.

(b) The owner or operator of a cargo vessel or passenger 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 director may require the owner or operator of a cargo vessel or passenger vessel to prove membership in such an organization.

(4) A fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts: (a) For a fishing vessel carrying predominantly nonpersistent product, one hundred thirty-three dollars and forty cents per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or one million three hundred thirty-four thousand dollars, whichever is greater; or (b) for a fishing vessel carrying predominantly persistent product, four hundred dollars and twenty cents per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or six million six hundred seventy thousand dollars, whichever is greater.

(5) 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 for necessary expenses.

~~((5) The 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 department. The 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.

NEW SECTION. Sec. 4. Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately, but only if Engrossed Substitute House Bill No. 1853 has become law. If Engrossed Substitute House Bill No. 1853 has not become law by June 30, 2003, sections 1 and 2 of this act are null and void.

Passed by the Senate April 15, 2003.

Passed by the House April 17, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 92

[Substitute House Bill 2197]

LAW ENFORCEMENT OFFICERS, FIRE FIGHTERS—RETIREMENT

AN ACT Relating to implementing Initiative Measure No. 790; amending RCW 44.44.040 and 41.45.060; reenacting and amending RCW 41.45.070 and 43.79A.040; adding new sections to chapter 41.26 RCW; adding a new section to chapter 41.45 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The law enforcement officers' and fire fighters' plan 2 retirement board established in section 4, chapter 2, Laws of 2003 has the following duties and powers in addition to any other duties or powers authorized or required by law. The board:

(1) Shall employ staff as necessary to implement the purposes of chapter 2, Laws of 2003. Staff must be state employees under Title 41 RCW;

(2) Shall adopt an annual budget as provided in section 5, chapter 2, Laws of 2003. Expenses of the board are paid from the expense fund created in section 6 of this act;

(3) May make, execute, and deliver contracts, conveyances, and other instruments necessary to exercise and discharge its powers and duties;

(4) May contract for all or part of the services necessary for the management and operation of the board with other state or nonstate entities authorized to do business in the state; and

(5) May contract with actuaries, auditors, and other consultants as necessary to carry out its responsibilities.

Sec. 2. RCW 44.44.040 and 1987 c 25 s 3 are each amended to read as follows:

The office of the state actuary shall have the following powers and duties:

(1) Perform all actuarial services for the department of retirement systems, including all studies required by law. Reimbursement for such services shall be

made to the state actuary pursuant to the provisions of RCW 39.34.130 as now or hereafter amended.

(2) Advise the legislature and the governor regarding pension benefit provisions, and funding policies and investment policies of the state investment board.

(3) Consult with the legislature and the governor concerning determination of actuarial assumptions used by the department of retirement systems.

(4) Prepare a report, to be known as the actuarial fiscal note, on each pension bill introduced in the legislature which briefly explains the financial impact of the bill. The actuarial fiscal note shall include: (a) The statutorily required contribution for the biennium and the following twenty-five years; (b) the biennial cost of the increased benefits if these exceed the required contribution; and (c) any change in the present value of the unfunded accrued benefits. An actuarial fiscal note shall also be prepared for all amendments which are offered in committee or on the floor of the house of representatives or the senate to any pension bill. However, a majority of the members present may suspend the requirement for an actuarial fiscal note for amendments offered on the floor of the house of representatives or the senate.

(5) Provide such actuarial services to the legislature as may be requested from time to time.

(6) Provide staff and assistance to the committee established under RCW (~~46.44.050~~) 44.44.050.

(7) Provide actuarial assistance to the law enforcement officers' and fire fighters' plan 2 retirement board as provided in chapter 2, Laws of 2003. Reimbursement for services shall be made to the state actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of 2003.

Sec. 3. RCW 41.45.060 and 2002 c 26 s 2 are each amended to read as follows:

(1) The state actuary shall provide actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted by the council under RCW 41.45.030 or 41.45.035.

(2) Not later than September 30, 2002, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

(a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system plan 1;

(b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system to be used in the ensuing biennial period; and

(c) A basic employer contribution rate for the school employees' retirement system for funding both that system and the public employees' retirement system plan 1.

The contribution rates adopted by the council shall be subject to revision by the legislature.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement

officers' and fire fighters' retirement system plan 1 not later than June 30, 2024, except as provided in subsection (5) of this section; and

(b) To also continue to fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, and the school employees' retirement system plans 2 and 3(~~(, and the law enforcement officers' and fire fighters' retirement system plan 2)~~) in accordance with RCW 41.45.061, 41.45.067, and this section(~~(; and~~

~~(e) For the law enforcement officers' and fire fighters' system plan 2 the rate charged to employers, except as provided in RCW 41.26.450, shall be thirty percent of the cost of the retirement system and the rate charged to the state shall be twenty percent of the cost of the retirement system).~~

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 employer contribution rate and a Washington state patrol retirement system contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(6) The director of the department of retirement systems shall collect the rates established in RCW 41.45.053 through June 30, 2003. Thereafter, the director shall collect those rates adopted by the council. The rates established in RCW 41.45.053, or by the council, shall be subject to revision by the council.

NEW SECTION. **Sec. 4.** A new section is added to chapter 41.45 RCW to read as follows:

(1) Not later than September 30, 2004, and every even-numbered year thereafter, the law enforcement officers' and fire fighters' plan 2 retirement board shall adopt contribution rates for the law enforcement officers' and fire fighters' retirement system plan 2 as provided in RCW 41.26.720(1)(a).

(2) The law enforcement officers' and fire fighters' plan 2 retirement board shall immediately notify the directors of the office of financial management and department of retirement systems of the state, employer, and employee rates adopted. Thereafter, the director shall collect those rates adopted by the board. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

Sec. 5. RCW 41.45.070 and 2001 2nd sp.s. c 11 s 16 and 2001 2nd sp.s. c 11 s 15 are each reenacted and amended to read as follows:

(1) In addition to the basic employer contribution rate established in RCW 41.45.060 (~~(or 41.45.053)~~), the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsections (6) and (7) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic member, employer, and state contribution rate established in (~~(RCW 41.45.060 or 41.45.053)~~) section 4 of this act for the law

enforcement officers' and fire fighters' retirement system plan 2, the department shall also establish ((a)) supplemental rates to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system plan 2. Except as provided in subsection (6) of this section, ((this)) these supplemental rates shall be calculated by the actuary retained by the law enforcement officers' and fire fighters' board and the state actuary through the process provided in RCW 41.26.720(1)(a) and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan 2 and plan 3, the teachers' retirement system plan 2 and plan 3, or the school employees' retirement system plan 2 and plan 3 ~~((or the law enforcement officers' and fire fighters' retirement system plan 2,))~~ shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, or 41.45.067.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998.

(7) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998.

NEW SECTION. Sec. 6. (1) A law enforcement officers' and fire fighters' retirement system plan 2 expense fund is created within the law enforcement officers' and fire fighters' retirement system plan 2 fund.

(2) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the expense fund. The state investment board is authorized to adopt investment policies for the money in the expense fund. 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 law enforcement officers' and fire fighters' retirement system plan 2 fund.

(3) 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.

(4) When appropriate for investment purposes, the state investment board may commingle money in the expense fund with other funds.

(5) The authority to establish all policies relating to the expense fund, other than the investment policies as set forth in subsections (2) through (4) of this section, resides with the law enforcement officers' and fire fighters' plan 2 retirement board. With the exception of investments by, and expenses of, the state investment board set forth in subsection (2) of this section, disbursements from this expense fund may be made only on the authorization of the law enforcement officers' and fire fighters' plan 2 retirement board, and money in the expense fund may be spent only for the purposes of defraying the expenses of the law enforcement officers' and fire fighters' plan 2 retirement board as provided in section 5, chapter 2, Laws of 2003.

(6) The state investment board shall routinely consult and communicate with the law enforcement officers' and fire fighters' plan 2 retirement board on the investment policy, earnings of the trust, and related needs of the expense fund.

(7) The law enforcement officers' and fire fighters' plan 2 retirement board shall administer the expense fund in a manner reasonably designed to be actuarially sound. The assets of the expense fund must be sufficient to defray the obligations of the account including the costs of administration. Money used for administrative expenses is subject to the allotment of all expenditures pursuant to chapter 43.88 RCW. However, an appropriation is not required for expenditures. Administrative expenses include, but are not limited to, the salaries and expenses of law enforcement officers' and fire fighters' plan 2 retirement board personnel including lease payments, travel, and goods and services necessary for operation of the board, audits, and other general costs of conducting the business of the board.

(8) The state investment board shall allocate from the law enforcement officers' and fire fighters' retirement system plan 2 fund to the expense fund the amount necessary to cover the expenses of the law enforcement officers' and fire fighters' plan 2 retirement board.

NEW SECTION. Sec. 7. All expenses of the department and the office of the state actuary related to the implementation of chapter 2, Laws of 2003 shall be reimbursed from the law enforcement officers' and fire fighters' retirement system expense fund under RCW 39.34.130.

Sec. 8. RCW 43.79A.040 and 2002 c 322 s 5, 2002 c 204 s 7, and 2002 c 61 s 6 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 promise scholarship account, the college savings program account, 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 state combined fund drive account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and fire fighters' plan 2 expense fund, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility 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 city and county advance right-of-way revolving fund, 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. 9. Sections 1, 6, and 7 of this act are each added to chapter 41.26 RCW and codified with the subchapter heading of "plan 2 governance."

NEW SECTION. Sec. 10. In the event a final judicial decision renders Initiative Measure No. 790 unenforceable, in whole or in part, making this act or parts of this act unnecessary, unreasonable, or impossible to implement, the director of the department of retirement systems shall adopt rules as necessary to implement chapters 41.26 and 41.45 RCW as they existed on November 1, 2002. The director shall prepare and submit corrective legislation to the legislature.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. This act 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 by the House March 18, 2003.

Passed by the Senate April 15, 2003.
Approved by the Governor April 23, 2003.
Filed in Office of Secretary of State April 23, 2003.

CHAPTER 93

[Substitute House Bill 2198]
LEOFF—EXCESS EARNINGS

AN ACT Relating to removing the allocation of excess earnings from section 6 of Initiative Measure No. 790; amending RCW 41.26.725; and declaring an emergency.

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

Sec. 1. RCW 41.26.725 and 2003 c 2 s 6 (Initiative Measure No. 790) are each amended to read as follows:

(1) The board of trustees shall establish contributions as set forth in this section. The cost of the minimum benefits as defined in this plan shall be funded on the following ratio:

- Employee contributions 50%
- Employer contributions 30%
- State contributions 20%

(2) The minimum benefits shall constitute a contractual obligation of the state and the contributing employers and may not be reduced below the levels in effect on July 1, 2003. The state and the contributing employers shall maintain the minimum benefits on a sound actuarial basis in accordance with the actuarial standards adopted by the board.

(3) Increased benefits created as provided for in RCW 41.26.720 are granted on a basis not to exceed the contributions provided for in this section. In addition to the contributions necessary to maintain the minimum benefits, for any increased benefits provided for by the board, the employee contribution shall not exceed fifty percent of the actuarial cost of the benefit. In no instance shall the employee cost exceed ten percent of covered payroll without the consent of a majority of the affected employees. Employer contributions shall not exceed thirty percent of the cost, but in no instance shall the employer contribution exceed six percent of covered payroll. State contributions shall not exceed twenty percent of the cost, but in no instance shall the state contribution exceed four percent of covered payroll. Employer contributions may not be increased above the maximum under this section without the consent of the governing body of the employer. State contributions may not be increased above the maximum provided for in this section without the consent of the legislature. In the event that the cost of maintaining the increased benefits on a sound actuarial basis exceeds the aggregate contributions provided for in this section, the board shall submit to the affected members of the plan the option of paying the increased costs or of having the increased benefits reduced to a level sufficient to be maintained by the aggregate contributions. The reduction of benefits in accordance with this section shall not be deemed a violation of the contractual rights of the members, provided that no reduction may result in benefits being lower than the level of the minimum benefits.

(4) The board shall manage the trust in a manner that maintains reasonable contributions and administrative costs. Providing additional benefits to members and beneficiaries is the board's priority.

~~((5) All earnings of the trust in excess of the actuarially assumed rate of investment return shall be used exclusively for additional benefits for members and beneficiaries.))~~

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 by the House April 7, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor April 23, 2003.

Filed in Office of Secretary of State April 23, 2003.

CHAPTER 94

[Substitute Senate Bill 5509]

ORGAN DONOR REGISTRY

AN ACT Relating to the organ donor registry; amending RCW 68.50.530 and 68.50.540; adding new sections to chapter 68.50 RCW; adding a new section to chapter 46.20 RCW; adding a new section to chapter 46.12 RCW; and creating new sections.

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

NEW SECTION. Sec. I. The legislature finds that the use of anatomical gifts, including the donation of organ or tissue, for the purpose of transplantation is of great interest to the citizens of Washington state and may save or prolong the life or improve the health of extremely ill and dying persons.

The legislature further finds that more than eighty thousand people are currently waiting for life-saving organ transplants on the national transplant waiting list. More than one thousand two hundred of these people are listed at Washington state transplant centers. Nationally, seventeen people die each day as a result of the shortage of donated organs.

The creation of a statewide organ and tissue donor registry is crucial to facilitate timely and successful organ and tissue procurement. The legislature further finds that continuing education as to the existence and maintenance of a statewide organ and tissue donor registry is in the best interest of the people of the state of Washington.

Sec. 2. RCW 68.50.530 and 1996 c 178 s 15 are each amended to read as follows:

Unless the context requires otherwise, the definitions in this section apply throughout RCW 68.50.520 through ~~((68.50.630))~~ 68.50.620, sections 3 and 7 of this act, and 68.50.901 through 68.50.904.

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual.

(3) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(4) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

(5) "Enucleator" means an individual who is qualified to remove or process eyes or parts of eyes.

(6) "Hospital" means a facility licensed under chapter 70.41 RCW, or as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(9) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under chapters 18.71 and 18.57 RCW.

(10) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(11) "Reasonable costs" include: (a) Programming and software installation and upgrades; (b) employee training that is specific to the organ and tissue donor registry or the donation program created in section 6 of this act; (c) literature that is specific to the organ and tissue donor registry or the donation program created in section 6 of this act; and (d) hardware upgrades or other issues important to the organ and tissue donor registry or the donation program created in section 6 of this act that have been mutually agreed upon in advance by the department of licensing and the Washington state organ procurement organizations.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

~~((42))~~ (13) "Technician" means an individual who is qualified to remove or process a part.

(14) "Washington state organ procurement organization" means an organ procurement organization that has been designated by the United States department of health and human services to coordinate organ procurement activities for any portion of Washington state.

NEW SECTION. Sec. 3. A new section is added to chapter 68.50 RCW to read as follows:

(1) The department of licensing shall electronically transfer all information that appears on the front of a driver's license or identicard including the name, gender, date of birth, and most recent address of any person who obtains a driver's license or identicard and volunteers to donate organs or tissue upon death to any Washington state organ procurement organization that intends to establish a statewide organ and tissue donor registry as provided under subsection (2) of this section. All subsequent electronic transfers of donor information shall be at no charge to this Washington state organ procurement organization.

(2) Information obtained by a Washington state organ procurement organization under subsection (1) of this section shall be used for the purpose of establishing a statewide organ and tissue donor registry accessible to in-state recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Washington state resident is a donor of an anatomical gift and is not located in this state at the time of death or immediately before the death of the donor. Any registry created using information acquired under subsection (1) of

this section must include all residents of Washington state regardless of their residence within the service area designated by the federal government.

(3) No organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund raising. Organ and tissue donor registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donor registry information may be made by a Washington state organ procurement organization to another Washington state organ procurement organization, a recognized in-state procurement agency for other tissue recovery, or an out-of-state federally designated organ procurement organization that has been designated by the United States department of health and human services to serve an area outside Washington.

(4) A Washington state organ procurement organization may acquire donor information from sources other than the department of licensing.

(5) All reasonable costs associated with the creation of an organ and tissue donor registry shall be paid by the Washington state organ procurement organization that has requested the information. The reasonable costs associated with the initial installation and setup for electronic transfer of the donor information at the department of licensing shall be paid by the Washington state organ procurement organization that requested the information.

(6) An individual does not need to participate in the organ and tissue donor registry to be a donor of organs or tissue. The registry is to facilitate organ and tissue donations and not inhibit persons from being donors upon death.

Sec. 4. RCW 68.50.540 and 1995 c 132 s 1 are each amended to read as follows:

(1) An individual who is at least eighteen years of age, or an individual who is at least sixteen years of age as provided in subsection (12) of this section, may (a) make an anatomical gift for any of the purposes stated in RCW 68.50.570(1), (b) limit an anatomical gift to one or more of those purposes, or (c) refuse to make an anatomical gift.

(2) An anatomical gift may be made by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other and state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) The donee or other person authorized to accept the anatomical gift may employ or authorize a physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6)(a) A donor may amend or revoke an anatomical gift, not made by will, by:

((a)) (i) A signed statement;

((b)) (ii) An oral statement made in the presence of two individuals;

~~((e))~~ (iii) Any form of communication during a terminal illness or injury;
or

~~((d))~~ (iv) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(b) A donor shall notify a Washington state organ procurement organization of the destruction, cancellation, or mutilation of the document of gift for the purpose of removing the person's name from the organ and tissue donor registry created in section 3 of this act. If the Washington state organ procurement organization that is notified does not maintain a registry for Washington residents, it shall notify all Washington state organ procurement organizations that do maintain such a registry.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6) of this section.

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of a person after the donor's death.

(9) An individual may refuse to make an anatomical gift of the individual's body or part by (a) a writing signed in the same manner as a document of gift, (b) a statement attached to or imprinted on a donor's motor vehicle operator's license, or (c) another writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under RCW 68.50.550.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9) of this section.

(12) An individual who is under the age of eighteen, but is at least sixteen years of age, may make an anatomical gift as provided by subsection (2) of this section, if the document of gift is also signed by either parent or a guardian of the donor. A document of gift signed by a donor under the age of eighteen that is not signed by either parent or a guardian shall not be considered valid until the person reaches the age of eighteen, but may be considered as evidence that the donor has not refused permission to make an anatomical gift under the provisions of RCW 68.50.550.

NEW SECTION. Sec. 5. A new section is added to chapter 46.20 RCW to read as follows:

The department shall electronically transfer the information of all persons who upon application for a driver's license or identocard volunteer to donate organs or tissue to a registry created in section 3 of this act, and any subsequent changes to the applicant's donor status when the applicant renews a driver's license or identocard or applies for a new driver's license or identocard.

NEW SECTION. Sec. 6. A new section is added to chapter 46.12 RCW to read as follows:

An applicant for a new or renewed registration for a vehicle required to be registered under this chapter or chapter 46.16 RCW may make a donation of one dollar or more to the organ and tissue donation awareness account to promote the donation of organs and tissues under the provisions of the uniform anatomical gift act, RCW 68.50.520 through 68.50.630. The department shall collect the donations and credit the donations to the organ and tissue donation awareness account, created in section 7 of this act. At least quarterly, the department shall transmit donations made to the organ and tissue donation awareness account to the foundation established for organ and tissue donation awareness purposes by the Washington state organ procurement organizations. All Washington state organ procurement organizations will have proportional access to these funds to conduct public education in their service areas. The donation of one or more dollars is voluntary and may be refused by the applicant. The department shall make available informational booklets or other informational sources on the importance of organ and tissue donations to applicants.

The department shall inquire of each applicant at the time the completed application is presented whether the applicant is interested in making a donation of one dollar or more and shall also specifically inform the applicant of the option for organ and tissue donations as required by RCW 46.20.113. The department shall also provide written information to each applicant volunteering to become an organ and tissue donor. The written information shall disclose that the applicant's name shall be transmitted to the organ and tissue donor registry created in section 3 of this act, and that the applicant shall notify a Washington state organ procurement organization of any changes to the applicant's donor status.

All reasonable costs associated with the creation of the donation program created under this section must be paid proportionally or by other agreement by a Washington state organ procurement organization.

For the purposes of this section, "reasonable costs" and "Washington state organ procurement organization" have the same meaning as defined in RCW 68.50.530.

NEW SECTION. Sec. 7. A new section is added to chapter 68.50 RCW to read as follows:

(1) The organ and tissue donation awareness account is created in the custody of the state treasurer. All receipts from donations made under section 6 of this act, and other contributions and appropriations specifically made for the purposes of organ and tissue donor awareness, shall be deposited into the account. Except as provided in subsection (2) of this section, expenditures from the account may be authorized by the director of the department of licensing or the director's designee and do not require an appropriation.

(2) The department of licensing shall submit a funding request to the legislature covering the reasonable costs associated with the ongoing maintenance associated with the electronic transfer of the donor information to the organ and tissue donor registry and the donation program established in section 6 of this act. The legislature shall appropriate to the department of licensing an amount it deems reasonable from the organ and tissue donation awareness account to the department of licensing for these purposes.

(3) At least quarterly, the department of licensing shall transmit any remaining moneys in the organ and tissue donation awareness account to the

foundation established in section 6 of this act for the costs associated with educating the public about the organ and tissue donor registry and related organ and tissue donation education programs.

(4) Funding for donation awareness programs must be proportional across the state regardless of which Washington state organ procurement organization may be designated by the United States department of health and human services to serve a particular geographic area. No funds from the account may be used to fund activities outside Washington state.

NEW SECTION. **Sec. 8.** Section 6 of this act takes effect with registrations that are due or become due January 1, 2004, or later.

Passed by the Senate April 22, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 6, 2003.

Filed in Office of Secretary of State May 6, 2003.

CHAPTER 95

[Engrossed House Bill 1079]

RESIDENT TUITION

AN ACT Relating to resident tuition at institutions of higher education; amending RCW 28B.15.012; adding a new section to chapter 28B.15 RCW; creating a new section; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 28B.15.012 and 2002 c 186 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) Any person who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma; who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent; who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

~~((f))~~ (g) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state;

~~((g))~~ (h) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

~~((h))~~ (i) 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

~~((i))~~ (j) 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)~~((h))~~ (e) or (i) 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.

NEW SECTION. Sec. 2. It is the intent of the legislature to ensure that students who receive a diploma from a Washington state high school or receive the equivalent of a diploma in Washington state and who have lived in Washington for at least three years prior to receiving their diploma or its equivalent are eligible for in-state tuition rates when they enroll in a public institution of higher education in Washington state.

***NEW SECTION. Sec. 3.** *A new section is added to chapter 28B.15 RCW to read as follows:*

The provisions of RCW 28B.15.012(2)(e) apply only to families of those who hold or entered the United States with work visas, temporary protected status visas, or green cards, or who have received amnesty from the federal government.

*Sec. 3 was vetoed. See message at end of chapter.

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 July 1, 2003.

Passed by the House April 21, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor May 7, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 7, 2003.

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

"I am returning herewith, without my approval as to section 3, Engrossed House Bill No. 1079 entitled:

"AN ACT Relating to resident tuition at institutions of higher education;"

This bill provides that students, who live in Washington for three years prior to receiving a high school diploma or equivalent in Washington, are eligible for in-state tuition rates at public colleges and universities in Washington.

Section 3 would have limited residency status for tuition purposes to students whose families hold work visas, temporary protected status visas, green cards, or who have received amnesty from the federal government. These students are already eligible for resident tuition. The limitations set forth in Section 3 are contrary to the stated intent of the bill.

For these reasons, I have vetoed section 3 of Engrossed House Bill No. 1079.

With the exception of section 3, Engrossed House Bill No. 1079 is approved."

CHAPTER 96

[House Bill 1292]

SUPERIOR COURT JUDGES

AN ACT Relating to superior court judges; amending RCW 2.08.062 and 2.08.064; and creating a new section.

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

Sec. 1. RCW 2.08.062 and 1998 c 270 s 1 are each amended to read as follows:

There shall be in the county of Chelan four judges of the superior court; in the county of Douglas one judge of the superior court; in the county of Clark ~~((eight))~~ ten judges of the superior court; in the county of Grays Harbor three judges of the superior court; in the county of Kitsap ~~((seven))~~ eight judges of the superior court; in the county of Kittitas ~~((one))~~ two judges of the superior court; in the county of Lewis three judges of the superior court.

Sec. 2. RCW 2.08.064 and 1997 c 347 s 1 are each amended to read as follows:

There shall be in the counties of Benton and Franklin jointly, ~~((five))~~ six judges of the superior court; in the county of Clallam, two judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, fifteen judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, four judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court.

NEW SECTION. Sec. 3. (1) The additional judicial positions created by sections 1 and 2 of this act in Clark county, Kitsap county, Kittitas county, and Benton and Franklin counties shall be effective only if each county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute.

(2)(a) The additional judicial positions created by section 1 of this act for the county of Clark take effect as follows: One additional judicial position shall be effective no earlier than the second Monday in January 2004, and one additional position shall be effective no earlier than the second Monday in January 2005. The actual starting dates for the positions may be established by the Clark county legislative authority upon request of the superior court and by recommendation of the Clark county executive authority, if any.

(b) The additional judicial position created by section 1 of this act for the county of Kitsap shall be effective no earlier than the second Monday in January 2005. The actual starting date for the position may be established by the Kitsap county legislative authority upon request of the superior court and by recommendation of the Kitsap county executive authority, if any.

(c) The additional judicial position created by section 1 of this act for the county of Kittitas shall be effective no earlier than the second Monday in January 2004. The actual starting date for the position may be established by the Kittitas county legislative authority upon request of the superior court and by recommendation of the Kittitas county executive authority, if any.

(d) The additional judicial position created by section 2 of this act jointly for the counties of Benton and Franklin shall be effective no earlier than July 1, 2003. The actual starting date for the position may be established by the Benton and Franklin county legislative authorities upon request of the superior court and by recommendation of the Benton and Franklin county executive authorities, if any.

Passed by the House March 11, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 97

[Substitute House Bill 1805]

DISTRICT COURT JUDGES

AN ACT Relating to changing the number of district court judges; amending RCW 3.34.010, 3.34.020, 3.34.100, 3.38.020, and 3.38.040; and declaring an emergency.

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

Sec. 1. RCW 3.34.010 and 2002 c 138 s 1 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, three; Chelan, two; Clallam, two; Clark, ~~((five))~~ six; Columbia, one; Cowlitz, two; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, ~~((twenty-six))~~ twenty-one; Kitsap, three; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, ten; Stevens, one; Thurston, two; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020.

Sec. 2. RCW 3.34.020 and 2002 c 83 s 1 are each amended to read as follows:

(1) Any change in the number of full and part-time district judges after January 1, 1992, shall be determined by the legislature after receiving a recommendation from the supreme court. The supreme court shall make its recommendations to the legislature based on an objective workload analysis that takes into account available judicial resources and the caseload activity of each court.

(2) The administrator for the courts, under the supervision of the supreme court, may consult with the board of judicial administration and the district and municipal court judge's association in developing the procedures and methods of applying the objective workload analysis.

(3) For each recommended change from the number of full and part-time district judges in any county as of January 1, 1992, the administrator for the courts, under the supervision of the supreme court, shall complete a judicial impact note detailing any local or state cost associated with such recommended change.

(4) If the legislature approves an increase in the base number of district judges in any county as of January 1, 1992, such increase in the base number of district judges and all related costs may be paid for by the county from moneys provided under RCW 82.14.310, and any such costs shall be deemed to be expended for criminal justice purposes as provided in RCW 82.14.315, and such expenses shall not constitute a supplanting of existing funding.

(5)(a) A county legislative authority that desires to change the number of full or part-time district judges from the base number on January 1, 1992, must first request the assistance of the supreme court. The administrator for the courts, under the supervision of the supreme court, shall conduct an objective workload analysis and make a recommendation of its findings to the legislature for consideration as provided in this section. Changes in the number of district court judges may only be made by the legislature in a year in which the quadrennial election for district court judges is not held.

(b) The legislative authority of any county may change a part-time district judge position to a full-time position.

Sec. 3. RCW 3.34.100 and 1992 c 76 s 1 are each amended to read as follows:

If a district judge dies, resigns, is convicted of a felony, ceases to reside in the district, fails to serve for any reason except temporary disability, or if his or her term of office is terminated in any other manner, the office shall be deemed vacant. The county legislative authority shall fill all vacancies by appointment and the judge thus appointed shall hold office until the next general election and until a successor is elected and qualified. However, if a vacancy in the office of district court judge occurs and the total number of district court judges remaining in the county is equal to or greater than the number of district court judges authorized in RCW 3.34.010 then the position shall remain vacant. District judges shall be granted sick leave in the same manner as other county employees. A district judge may receive when vacating office remuneration for unused accumulated leave and sick leave at a rate equal to one day's monetary compensation for each full day of accrued leave and one day's monetary compensation for each four full days of accrued sick leave, the total remuneration for leave and sick leave not to exceed the equivalent of thirty days' monetary compensation.

Sec. 4. RCW 3.38.020 and 1984 c 258 s 23 are each amended to read as follows:

The district court districting committee shall meet at the call of the prosecuting attorney to prepare ~~((a))~~ or amend the plan for the districting of the county into one or more district court districts in accordance with the provisions of chapters 3.30 through 3.74 RCW. The plan shall include the following:

(1) The boundaries of each district proposed to be established;

(2) The number of judges to be elected in each district or electoral district, if any. In determining the number of judges to be elected, the districting committee shall consider the results of an objective workload analysis conducted by the administrator for the courts;

(3) The location of the central office, courtrooms and records of each court;

(4) The other places in the district, if any, where the court shall sit;

(5) The number and location of district court commissioners to be authorized, if any;

(6) The departments, if any, into which each district court shall be initially organized, including municipal departments provided for in chapter 3.46 RCW;

(7) The name of each district; and

(8) The allocation of the time and allocation of salary of each judge who will serve part time in a municipal department.

Sec. 5. RCW 3.38.040 and 1984 c 258 s 27 are each amended to read as follows:

(1) The districting committee may meet for the purpose of amending the districting plan at any time on call of the county legislative authority, the chairperson of the committee or a majority of its members. Amendments to the plan shall be submitted to the county legislative authority not later than March 15th of each year for adoption by the county legislative authority following the same procedure as with the original districting plan. Amendments shall be adopted not later than May 1st following submission by the districting committee. Any amendment which would reduce the salary or shorten the term of any judge shall not be effective until the next regular election for district judge. All other amendments may be effective on a date set by the county legislative authority.

(2) The districting committee shall meet within forty-five days of the effective date of changes in the number of judges to be elected in each district court district, or electoral district, if any. Amendments to the plan concerning the number of judges to be elected in each district court district, or electoral district, if any, shall be submitted to the county legislative authority not later than ninety days after the effective date of changes in RCW 3.34.010, and the amendments shall be adopted not later than one hundred eighty days after the effective date of changes in RCW 3.34.010.

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 by the House April 21, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 98

[Substitute House Bill 1609]

PILOT REGIONAL CORRECTIONAL FACILITIES

AN ACT Relating to pilot regional correctional facilities; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that numerous changes to the sentencing reform act, chapter 9.94A RCW, as reported by the sentencing guidelines commission, have resulted in increases in the length of local jail and state prison sentences and in the number of local jail and state prison inmates. The intent of the sentencing reform act, particularly provisions regarding protection of the public, reduction of the risk of reoffense, and making frugal use

of state and local government resources, would best be served, in many instances, by local and state corrections authorities sharing resources and jurisdiction over regional correctional facilities.

NEW SECTION. Sec. 2. (1) Not later than December 31, 2003, the sentencing guidelines commission shall present to the legislature a plan for establishing pilot regional correctional facilities.

(2) The plan for establishing pilot regional correctional facilities must include, but is not limited to, the following:

(a) A plan for increasing the space availability in local and county jails for pretrial detainees;

(b) An efficient and effective plan for joint use of total confinement beds by local and state government;

(c) A description of proposed shared and/or revised jurisdiction and operational responsibility, including the possibility of establishing a regional corrections authority;

(d) A summary of proposed changes to the criminal code reflecting revised housing jurisdiction;

(e) A plan to account for the inmate population eligible for placement in pilot regional correctional facilities which includes: Pretrial detainees, inmates serving sentences of sixty days to twenty-four months, and inmates serving terms of confinement totaling more than one year.

(i) Other than pretrial detainees, only inmates serving sentences of sixty days to twenty-four months are eligible for placement in regional correctional facilities.

(ii) Regional correctional facilities must accept inmates serving terms of confinement totaling more than one year;

(f) A review of treatment services and programs intended to meet the needs of special populations including drug and substance abuse, mental health, and special medical needs;

(g) An estimate of potential benefits to local and county jail operators and to the state, which could be realized by implementation of pilot programs;

(h) A proposed method for identifying pilot regional correctional facility sites;

(i) A methodology for evaluating the costs benefit of operation of pilot facilities; and

(j) Recommendations for sharing capacity, resources, and funding of the construction and operation cost of the facilities.

Passed by the House April 21, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 99

[Substitute House Bill 1232]

JAIL BOOKING FEES

AN ACT Relating to jail booking fees; and amending RCW 70.48.390.

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

Sec. 1. RCW 70.48.390 and 1999 c 325 s 3 are each amended to read as follows:

A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee (~~of ten dollars~~) based on the jail's actual booking costs or one hundred dollars, whichever is less, to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records.

Passed by the House February 26, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 100

[House Bill 1391]

POSTCONVICTION DNA TESTING

AN ACT Relating to requests for postconviction DNA testing; and amending RCW 10.73.170.

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

Sec. 1. RCW 10.73.170 and 2001 c 301 s 1 are each amended to read as follows:

(1) On or before December 31, 2004, a person in this state who has been convicted of a felony and is currently serving a term of imprisonment and who has been denied postconviction DNA testing may submit a request to the state Office of Public Defense, which will transmit the 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, 2005, 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. The prosecutor shall inform the requestor and the state Office of Public Defense of the decision, and shall, in the case of an adverse decision, advise the requestor of appeals rights. 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.

(4) Notwithstanding any other provision of law, any biological material that has been secured in connection with a criminal case prior to July 22, 2001, may not be destroyed before January 1, 2005.

Passed by the House February 28, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 101

[Engrossed Substitute House Bill 1076]

POLICE VEHICLES—ELUDING

AN ACT Relating to attempting to elude a pursuing police vehicle; amending RCW 46.61.024; and prescribing penalties.

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

Sec. 1. RCW 46.61.024 and 1983 c 80 s 1 are each amended to read as follows:

(1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a reckless manner (~~(indicating a wanton or wilful disregard for the lives or property of others)~~) while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and ~~((his))~~ the vehicle shall be ~~((appropriately marked showing it to be an official police vehicle))~~ equipped with lights and sirens.

(2) It is an affirmative defense to this section which must be established by a preponderance of the evidence that: (a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances.

(3) The license or permit to drive or any nonresident driving privilege of a person convicted of a violation of this section shall be revoked by the department of licensing.

Passed by the House April 22, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 102

[Engrossed Substitute House Bill 1218]

FIRST RESPONDERS—INFORMATION

AN ACT Relating to the creation of a statewide first responder building mapping information system; adding new sections to chapter 36.28A RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature recognizes the extreme dangers present when the safety of our citizens requires first responders such as police and fire fighters to evacuate and secure a building. In an effort to prepare for responding to unintended disasters, criminal acts, and acts of terrorism, the legislature intends to create a statewide first responder building mapping information system that will provide all first responders with the information they need to be successful when disaster strikes. The first responder building mapping system in this act is to be developed for a limited and specific purpose and is in no way to be construed as imposing standards or system requirements on any other mapping systems developed and used for any other local government purposes.

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

(1) When funded, the Washington Association of Sheriffs and Police Chiefs shall create and operate a statewide first responder building mapping information system.

(2) All state agencies and local governments must utilize building mapping software that complies with the building mapping software standards established under section 3 of this act for any building mapped for this purpose after the statewide first responder building mapping information system is operational. If, prior to creation of the statewide building mapping information system, a local government has utilized building mapping software standards established under section 3 of this act, the local government may continue to use its own building mapping system unless the Washington association of sheriffs and police chiefs provides funding to bring the local government's system in compliance with the standards established under section 3 of this act.

(3) All state and local government-owned buildings that are occupied by state or local government employees must be mapped when funding is provided by the Washington association of sheriffs and police chiefs, or from other sources. Nothing in this act requires any state agency or local government to map a building unless the entire cost of mapping the building is provided by the Washington association of sheriffs and police chiefs, or from other sources.

(4) Once the statewide first responder building mapping information system is operational, all state and local government buildings that are mapped must forward their building mapping information data to the Washington association of sheriffs and police chiefs. All participating privately, federally, and tribally owned buildings may voluntarily forward their mapping and emergency information data to the Washington association of sheriffs and police chiefs. The Washington association of sheriffs and police chiefs may refuse any building mapping information that does not comply with the specifications described in section 3 of this act.

(5) Consistent with the guidelines developed under section 3 of this act, the Washington association of sheriffs and police chiefs shall electronically make the building mapping information available to all state, local, federal, and tribal law enforcement agencies, the military department of Washington state, and fire departments.

(6) Consistent with the guidelines developed under section 3 of this act, the Washington association of sheriffs and police chiefs shall develop building mapping software standards that must be used to participate in the statewide first responder building mapping information system.

(7) The Washington association of sheriffs and police chiefs shall pursue federal funds to:

(a) Create the statewide first responder building mapping information system; and

(b) Develop grants for the mapping of all state and local government buildings in the order determined under section 3 of this act.

(8) All tactical and intelligence information provided to the Washington association of sheriffs and police chiefs under this act is exempt from public disclosure as provided in RCW 42.17.310(1)(d).

NEW SECTION. Sec. 3. A new section is added to chapter 36.28A RCW to read as follows:

(1) The Washington association of sheriffs and police chiefs in consultation with the Washington state emergency management office, the Washington association of county officials, the Washington association of cities, the information services board, the Washington state fire chiefs' association, and the Washington state patrol shall convene a committee to establish guidelines related to the statewide first responder building mapping information system. The committee shall have the following responsibilities:

(a) Develop the type of information to be included in the statewide first responder building mapping information system. The information shall include, but is not limited to: Floor plans, fire protection information, evacuation plans, utility information, known hazards, and text and digital images showing emergency personnel contact information;

(b) Develop building mapping software standards that must be utilized by all entities participating in the statewide first responder building mapping information system;

(c) Determine the order in which buildings shall be mapped when funding is received;

(d) Develop guidelines on how the information shall be made available. These guidelines shall include detailed procedures and security systems to ensure that the information is only made available to the government entity that either owns the building or is responding to an incident at the building;

(e) Recommend training guidelines regarding using the statewide first responder building mapping information system to the criminal justice training commission and the Washington state patrol fire protection bureau.

(2)(a) Nothing in this section supersedes the authority of the information services board under chapter 43.105 RCW.

(b) Nothing in this section supersedes the authority of state agencies and local governments to control and maintain access to information within their independent systems.

NEW SECTION. Sec. 4. A new section is added to chapter 36.28A RCW to read as follows:

Units of local government and their employees, as provided in RCW 36.28A.010, are immune from civil liability for damages arising out of the

creation and use of the statewide first responder building mapping information system, unless it is shown that an employee acted with gross negligence or bad faith.

Passed by the House April 21, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 103

[Substitute House Bill 1619]

DRIVING UNDER THE INFLUENCE—CHILDREN PRESENT

AN ACT Relating to driving while under the influence with children in the vehicle; reenacting and amending RCW 46.61.5055; and prescribing penalties.

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

Sec. 1. RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and 1999 c 5 s 1 are each reenacted and amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person’s refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person’s alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender’s physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender’s electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person’s refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person’s alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless

the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720.

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty

is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720.

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include

an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By a court-ordered restriction under RCW 46.20.720.

(4) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(5) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers (~~at the time of the offense~~).

~~((5))~~ (6) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

~~((6))~~ (7) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15, or if by reason of the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years.

For purposes of this subsection, the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

~~((7))~~ (8) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

~~((8))~~ (9)(a) In addition to any nonsuspendable and nondeferable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

~~((9))~~ (10) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence

with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.

~~((10))~~ (11) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

~~((11))~~ (12) For purposes of this section:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522; and

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense.

Passed by the House April 21, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 104

[Substitute House Bill 1605]

JUSTICE INFORMATION NETWORK

AN ACT Relating to a statewide justice information network; amending RCW 10.98.160; and adding new sections to chapter 10.98 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 10.98 RCW to read as follows:

(1) The legislature finds that each of the state's justice agencies and the courts have developed independent information systems to address independent management and planning needs, that the state's justice information system is fragmented, and that access to complete, accurate, and timely justice information is difficult and inefficient.

(2) The legislature declares that the purpose of this act is to develop and maintain, in a cost-effective manner, a statewide network of criminal justice information that enables sharing and integrated delivery of justice information maintained in the state's independent information systems and that will:

(a) Maximize standardization of data and communications technology among law enforcement agencies, jails, prosecuting attorneys, the courts, corrections, and licensing;

(b) Reduce redundant data collection and input efforts;

(c) Reduce or eliminate paper-based information exchanges;

(d) Improve work flow within the criminal justice system;

(e) Provide complete, accurate, and timely information to criminal justice agencies and courts in a single computer session; and

(f) Maintain security and privacy rights respecting criminal justice information.

(3) Statewide coordination of criminal justice information will improve:

(a) The safety of the public and the safety of law enforcement officers and other public servants, by making more complete, accurate, and timely information concerning offenders available to all criminal justice agencies and courts;

(b) Decision making, by increasing the availability of statistical measures for review, evaluation, and promulgation of public policy; and

(c) Access to complete, accurate, and timely information by the public, to the extent permitted pursuant to chapters 10.97 and 42.17 RCW.

(4) The legislature encourages state and local criminal justice agencies and courts to collaborate in the development of justice information systems, as criminal justice agencies and courts collect the most complete, accurate, and timely information regarding offenders.

(5) The legislature finds that the implementation, operation, and continuing enhancement of a statewide justice information network that enables sharing and integrated delivery of information maintained in the state's independent information systems is critical to the complete, accurate, and timely performance of criminal background checks and to the effective communications between and among law enforcement, the courts, executive agencies, and political subdivisions of the state. The legislature further finds and declares that it is in the best interests of the citizens of the state and for the enhancement of public safety that the Washington integrated justice information board be created as soon as possible.

(6) The legislature finds that the intent, purpose, and goals of this act will be implemented most effectively by a board having the power, authority, and responsibility to develop, maintain, and enhance a statewide justice information

network that enables sharing and integrated delivery of justice information maintained in the state's independent information systems.

Sec. 2. RCW 10.98.160 and 1999 c 143 s 53 are each amended to read as follows:

In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrator for the courts, local law enforcement agencies, ~~((jailers))~~ local jails, the sentencing guidelines commission, the indeterminate sentence review board, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. ~~((An executive committee appointed by the heads of the department, the Washington state patrol, and the office of financial management))~~ The Washington integrated justice information board shall review and provide recommendations to state justice agencies and the courts for development and modification of the ~~((section, the department, and the office of financial management's felony criminal information systems))~~ statewide justice information network.

NEW SECTION. Sec. 3. A new section is added to chapter 10.98 RCW to read as follows:

(1) There is created the Washington integrated justice information board. The board shall be composed of the following members:

- (a) A representative appointed by the governor;
- (b) The attorney general;
- (c) The chief of the state patrol;
- (d) The secretary of the department of corrections;
- (e) The director of the department of licensing;
- (f) The administrator for the courts;
- (g) The director of the office of financial management;
- (h) The director of the department of information services;
- (i) The assistant secretary of the department of social and health services responsible for juvenile rehabilitation programs;
- (j) A sheriff appointed by the Washington association of sheriffs and police chiefs;
- (k) A police chief appointed by the Washington association of sheriffs and police chiefs;
- (l) A county legislative authority member appointed by the Washington state association of counties;
- (m) An elected county clerk appointed by the Washington association of county clerks;
- (n) A representative appointed by the Washington association of city and county information systems;
- (o) Two representatives appointed by the judicial information system committee;
- (p) A representative appointed by the association of Washington cities; and
- (q) An elected prosecutor appointed by the Washington association of prosecuting attorneys.

These members shall constitute the membership of the board with full voting rights and shall serve at the pleasure of the appointing authority. Each member may, in writing, appoint a designee to serve in the member's absence. Any member of the board shall immediately cease to be a member if he or she ceases to hold the particular office or employment that was the basis of the appointment. Vacancies shall be filled in the same manner that the original appointments were made to the board.

(2) The board may appoint additional justice information stakeholders as nonvoting members to the board.

(3) In making the appointments, the appointing authorities shall endeavor to assure that there is committed board membership having expertise relating to state and local criminal justice business practices and to information sharing and integration technology.

NEW SECTION. Sec. 4. A new section is added to chapter 10.98 RCW to read as follows:

The board shall elect a chair and vice-chair from among its voting members. Nine voting members of the board shall constitute a quorum. Meetings may be called by the chair or upon the written request of three members of the board. Meeting participation may be by means of conference call or any other communication equipment that allows all persons participating in the meeting to speak and hear all participants.

NEW SECTION. Sec. 5. A new section is added to chapter 10.98 RCW to read as follows:

(1) The board shall have the following powers and duties related to integration of justice information:

(a) Meet at such times and places as may be designated by the chair or by three voting members of the board;

(b) Adopt its own bylaws, and such other rules governing the board and the conduct of its meetings as the board may deem reasonable or convenient;

(c) Coordinate and facilitate the governance, implementation, operation, maintenance, and enhancement of sharing and integrated delivery of complete, accurate, and timely justice information;

(d) Increase the use of automated electronic data transfer among state justice agencies, local justice agencies, and courts;

(e) Establish and implement uniform data standards and protocols for data transfer and sharing, interface applications, and connectivity standards;

(f) Provide state agency and court justice information to criminal justice agencies and courts through connections and applications that enable single session access from multiple platforms;

(g) Pursue, develop, and coordinate grants and other funding opportunities for state and local justice information projects that will expand or enhance the sharing and integrated delivery of statewide justice information;

(h) Assess state and local agencies' projects and plans for sharing and delivery of integrated justice information, as may be requested by the agencies, the director of the office of financial management, the supreme court, or the legislature;

(i) Assist the office of financial management with budgetary and policy review of state agency plans affecting the justice information network;

(j) Recommend to the governor, the supreme court, and the legislature those legislative changes and appropriations needed to implement, maintain, and enhance a statewide justice information network and to assure the availability of complete, accurate, and timely justice information;

(k) Encourage coordination, consistency, and compatibility among courts, state agency, and local agency justice information systems and projects; and

(l) Adopt strategic and tactical planning goals and objectives that implement, maintain, and enhance sharing and integrated delivery of justice information for the state.

(2)(a) Nothing in this section supersedes the authority of the information services board under chapter 43.105 RCW.

(b) Nothing in this section supersedes the authority of courts, state agencies, and local agencies to control and maintain access to information within their independent systems.

NEW SECTION. Sec. 6. A new section is added to chapter 10.98 RCW to read as follows:

The board shall file a report with the governor, the supreme court, and the chairs and ranking minority members of the senate and house committees with jurisdiction over criminal justice funding and policy by September 1, 2004, and not less than every two years thereafter. The report shall include specific goals for improving criminal justice information systems integration, a timeline and identifiable benchmarks for achieving those goals, and recommendations concerning legislative changes and appropriations needed to implement, operate, and enhance a statewide justice information network to assure the availability of complete, accurate, and timely justice information.

Passed by the House April 21, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 105

[House Bill 1878]

CUSTODY PETITIONS—COURT ACCESS

AN ACT Relating to providing the courts access to information in third-party custody petitions; amending RCW 13.50.100, 26.10.030, and 43.43.830; adding new sections to chapter 26.10 RCW; and adding a new section to chapter 26.50 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 26.10 RCW to read as follows:

(1) Before granting any order regarding the custody of a child under this chapter, the court shall consult the judicial information system, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child.

(2) Before entering a final order, the court shall:

(a) Direct the department of social and health services to release information as provided under RCW 13.50.100; and

(b) Require the petitioner to provide the results of an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system as described in chapter 43.43 RCW for the petitioner and adult members of the petitioner's household.

Sec. 2. RCW 13.50.100 and 2001 c 162 s 2 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 statewide judicial information system. However, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the judicial information system when the juvenile is no longer subject to the compulsory attendance laws in chapter 28A.225 RCW. A county clerk is not liable for unauthorized release of this data by persons or agencies not in his or her employ or otherwise subject to his or her control, nor is the county clerk liable for inaccurate or incomplete information collected from litigants or other persons required to provide identifying data pursuant to this section.

(4) Subject to (a) of this subsection, the department of social and health services may release information retained in the course of conducting child protective services investigations to a family or juvenile court bearing a petition for custody under chapter 26.10 RCW.

(a) Information that may be released shall be limited to information regarding investigations in which: (i) The juvenile was an alleged victim of abandonment or abuse or neglect; or (ii) the petitioner for custody of the juvenile, or any individual aged sixteen or older residing in the petitioner's household, is the subject of a founded or currently pending child protective services investigation made by the department subsequent to October 1, 1998.

(b) Additional information may only be released with the written consent of the subject of the investigation and the juvenile alleged to be the victim of abandonment or abuse and neglect, or the parent, custodian, guardian, or personal representative of the juvenile, or by court order obtained with notice to all interested parties.

(5) Any disclosure of records or information by the department of social and health services pursuant to this section shall not be deemed a waiver of any confidentiality or privilege attached to the records or information by operation of any state or federal statute or regulation, and any recipient of such records or information shall maintain it in such a manner as to comply with such state and federal statutes and regulations and to protect against unauthorized disclosure.

(6) 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))~~ (7) 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))~~ (8) A juvenile or his or her parent denied access to any records following an agency determination under subsection ~~((5))~~ (7) 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 subsection ~~((5))~~ (7)(a) and (b) of this section.

~~((7))~~ (9) The person making a motion under subsection ~~((6))~~ (8) 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))~~ (10) 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))~~ (7) 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))~~ (11) 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. 3. RCW 26.10.030 and 2000 c 135 s 3 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.

(3) The petitioner shall include in the petition the names of any adult members of the petitioner's household.

NEW SECTION. Sec. 4. A new section is added to chapter 26.50 RCW to read as follows:

In addition to the information required to be included in the judicial information system under RCW 26.50.160, the data base shall contain the names of any adult cohabitant of a petitioner to a third-party custody action under chapter 26.10 RCW.

Sec. 5. RCW 43.43.830 and 2002 c 229 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; ~~((c))~~

(c) Any prospective adoptive parent, as defined in RCW 26.33.020; or

(d) Any prospective custodian in a nonparental custody proceeding under chapter 26.10 RCW.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not

include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(8) "Disciplinary board final decision" means any final decision issued by a disciplining authority under chapter 18.130 RCW or the secretary of the department of health for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;

- (g) Osteopathic medicine and surgery;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing; and
- (l) Psychology.

"Disciplinary board final decision," for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

(9) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(10) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(11) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(12) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

NEW SECTION. Sec. 6. A new section is added to chapter 26.10 RCW to read as follows:

(1) A party seeking a custody order shall submit, along with his or her motion, an affidavit declaring that the child is not in the physical custody of one of its parents or that neither parent is a suitable custodian and setting forth facts supporting the requested order. The party seeking custody shall give notice, along with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits.

(2) The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for bearing on an order to show cause why the requested order should not be granted.

NEW SECTION. Sec. 7. A new section is added to chapter 26.10 RCW to read as follows:

(1) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied.

Passed by the House April 21, 2003.
 Passed by the Senate April 16, 2003.
 Approved by the Governor May 7, 2003.
 Filed in Office of Secretary of State May 7, 2003.

CHAPTER 106

[Engrossed House Bill 1010]

MENTAL HEALTH FACILITIES—DISCHARGE—MINORS

AN ACT Relating to discharge of a minor from a mental health facility; and amending RCW 71.34.046.

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

Sec. 1. RCW 71.34.046 and 1998 c 296 s 16 are each amended to read as follows:

(1) Any minor thirteen years or older voluntarily admitted to an evaluation and treatment facility under RCW 71.34.042 may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(2) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(3) The professional person shall discharge the minor, thirteen years or older, from the facility ~~((upon))~~ by the second judicial day following receipt of the minor's notice of intent to leave.

Passed by the House February 12, 2003.
 Passed by the Senate April 17, 2003.
 Approved by the Governor May 7, 2003.
 Filed in Office of Secretary of State May 7, 2003.

CHAPTER 107

[House Bill 1612]

MENTAL HEALTH TREATMENT—PARENTAL NOTIFICATION

AN ACT Relating to notification to parents of the mental health treatment options for minors available under chapter 71.34 RCW; and adding a new section to chapter 71.34 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 71.34 RCW to read as follows:

(1) The evaluation and treatment facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter to every parent or guardian of a minor child when the parent or guardian seeks to have his or her minor child treated at an evaluation and treatment facility.

(2) The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section.

Passed by the House April 15, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 108

[Substitute House Bill 1855]

SOCIAL WORKERS—EDUCATION

AN ACT Relating to licensed independent clinical social worker education and experience requirements; and amending RCW 18.225.090.

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

Sec. I. RCW 18.225.090 and 2001 c 251 s 9 are each amended to read as follows:

(1) The secretary shall issue a license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following education and experience requirements for the applicant’s practice area.

(a) Licensed social work classifications:

(i) Licensed advanced social worker:

(A) Graduation from a master’s or doctorate social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of three thousand two hundred hours with ninety hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours, fifty hours must include direct supervision by a licensed advanced social worker or licensed independent clinical social worker; the other forty hours may be with an equally qualified licensed mental health practitioner. Forty hours must be in one-to-one supervision and fifty hours may be in one-to-one supervision or group supervision. Distance supervision is limited to forty supervision hours. Eight hundred hours must be in direct client contact; and

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(ii) Licensed independent clinical social worker:

(A) Graduation from a master’s or doctorate level social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of four thousand hours of

experience, of which one thousand hours must be direct client contact, over a three-year period supervised by a licensed independent clinical social worker who has been licensed or certified for at least five years and who has had at least one year of experience in supervising the clinical social work practice of others, with supervision of at least one hundred thirty hours by a licensed mental health practitioner. Of the total supervision, seventy hours must be with an independent clinical social worker meeting the qualifications under this subsection (1)(a)(ii)(C); the other sixty hours may be with an equally qualified licensed mental health practitioner. Sixty hours must be in one-to-one supervision and seventy hours may be in one-to-one supervision or group supervision. Distance supervision is limited to sixty supervision hours; and

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(b) Licensed mental health counselor:

(i) Graduation from a master's or doctoral level educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards;

(ii) Successful completion of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of thirty-six months full-time counseling or three thousand hours of postgraduate mental health counseling under the supervision of a qualified licensed mental health counselor in an approved setting. The three thousand hours of required experience includes a minimum of one hundred hours spent in immediate supervision with the qualified licensed mental health counselor, and includes a minimum of one thousand two hundred hours of direct counseling with individuals, couples, families, or groups; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(c) Licensed marriage and family therapist:

(i) Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards;

(ii) Successful passage of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of two calendar years of full-time marriage and family therapy. Of the total supervision, one hundred hours must be with a licensed marriage and family therapist with at least five years' clinical experience; the other one hundred hours may be with an equally qualified licensed mental health practitioner. Total experience requirements include:

(A) A minimum of three thousand hours of experience, one thousand hours of which must be direct client contact; at least five hundred hours must be gained in diagnosing and treating couples and families; plus

(B) At least two hundred hours of qualified supervision with a supervisor. At least one hundred of the two hundred hours must be one-on-one supervision, and the remaining hours may be in one-on-one or group supervision.

Applicants who have completed a master’s program accredited by the commission on accreditation for marriage and family therapy education of the American association for marriage and family therapy may be credited with five hundred hours of direct client contact and one hundred hours of formal meetings with an approved supervisor; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(2) The department shall establish by rule what constitutes adequate proof of meeting the criteria.

(3) In addition, applicants shall be subject to the grounds for denial of a license or issuance of a conditional license under chapter 18.130 RCW.

Passed by the House March 14, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 109

[House Bill 1106]

ELECTION OFFICES—ON-SITE VISITS

AN ACT Relating to the secretary of state; and adding a new section to chapter 29.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 29.04 RCW to read as follows:

The secretary of state, or any staff of the elections division of the office of secretary of state, may make unannounced on-site visits to county election offices and facilities to observe the handling, processing, counting, or tabulation of ballots.

Passed by the House March 3, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 110

[Substitute House Bill 1222]

VOTER ACCESSIBILITY

AN ACT Relating to voter accessibility; and adding a new section to chapter 29.33 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 29.33 RCW to read as follows:

(1) The secretary of state shall adopt rules and establish standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters.

(2) At each polling location, at least one voting unit certified by the secretary of state shall provide access to individuals who are blind or visually impaired.

(3) Compliance with this provision in regard to voting technology and systems purchased prior to the effective date of this section shall be achieved at the time of procurement of an upgrade of technology compatible with nonvisual voting methods or replacement of existing voting equipment or systems.

(4) Compliance with subsections (2) and (3) of this section is contingent on available funds to implement this provision.

(5) For purposes of this section, the following definitions apply:

(a) "Accessible" includes receiving, using, selecting, and manipulating voter data and controls.

(b) "Nonvisual" includes synthesized speech, Braille, and other output methods.

(c) "Blind and visually impaired" excludes persons who are both deaf and blind.

(6) This section does not apply to voting by absentee ballot.

Passed by the House March 11, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 111

[Substitute Senate Bill 5221]

ELECTIONS—TITLE REORGANIZATION

AN ACT Relating to reorganization of statutes on elections; amending RCW 29.01.006, 29.01.008, 29.01.043, 29.01.045, 29.01.055, 29.01.090, 29.01.110, 29.01.120, 29.01.137, 29.01.140, 29.01.170, 29.01.180, 29.04.001, 29.04.010, 29.04.020, 29.57.140, 29.04.070, 29.04.060, 29.04.085, 29.04.088, 29.04.230, 29.13.070, 29.13.010, 29.13.020, 29.13.045, 29.13.048, 29.60.010, 29.60.040, 29.60.050, 29.98.020, 29.04.080, 29.19.070, 29.60.020, 29.07.005, 29.04.095, 29.08.010, 29.07.010, 29.07.110, 29.07.220, 29.10.081, 29.07.092, 29.07.152, 29.07.030, 29.07.070, 29.07.080, 29.07.090, 29.08.080, 29.07.025, 29.07.260, 29.07.270, 29.10.020, 29.10.040, 29.10.051, 29.10.090, 29.10.100, 29.10.185, 29.10.220, 29.10.230, 29.04.250, 29.07.130, 29.04.100, 29.04.110, 29.04.120, 29.04.160, 29.10.127, 29.10.150, 29.33.081, 29.33.330, 29.33.350, 29.04.200, 29.57.010, 29.57.090, 29.57.160, 29.04.040, 29.04.050, 29.48.005, 29.27.090, 29.15.025, 29.13.050, 29.04.170, 29.24.010, 29.24.040, 29.24.070, 29.15.010, 29.15.090, 29.15.030, 29.15.060, 29.15.220, 29.15.190, 29.04.180, 29.18.150, 29.18.160, 29.68.080, 29.68.100, 29.68.130, 29.04.035, 29.27.076, 29.81.310, 29.81A.010, 29.81A.020, 29.81A.040, 29.30.005, 29.30.081, 29.36.220, 29.36.250, 29.36.260, 29.36.360, 29.51.125, 29.51.185, 29.48.035, 29.51.050, 29.51.060, 29.51.100, 29.51.200, 29.54.018, 29.54.010, 29.54.015, 29.45.010, 29.45.020, 29.45.030, 29.45.050, 29.45.070, 29.45.120, 29.38.040, 29.38.060, 29.21.410, 29.27.030, 29.27.080, 29.27.100, 29.27.110, 29.19.010, 29.82.010, 29.82.021, 29.82.025, 29.82.030, 29.82.040, 29.82.080, 29.82.110, 29.82.120, 29.82.140, 29.71.010, 29.71.030, 29.71.040, 29.71.050, 29.74.010, 29.74.030, 29.74.060, 29.74.070, 29.74.100, 29.74.110, 29.74.130, 29.13.040, 29.54.075, 29.54.085, 29.62.030, 29.62.020, 29.54.025, 29.62.040, 29.62.050, 29.62.080, 29.62.090, 29.62.100, 29.62.120, 29.62.130, 29.64.010, 29.64.090, 29.65.010, 29.65.020, 29.65.040, 29.65.060, 29.65.080, 29.65.090, 29.65.100, 29.79.010, 29.79.015, 29.79.020, 29.79.030, 29.79.080, 29.79.090, 29.79.100, 29.79.110, 29.79.115, 29.79.120, 29.79.150, 29.79.160, 29.79.170, 29.79.230, 29.79.300, 29.10.060, 29.04.140, 29.42.010, 29.42.020, 29.42.030, 29.42.050, 29.42.070, 29.85.245, 29.82.210, 29.38.070, 29.79.480, 29.82.220, 29.79.440, 29.82.170, 29.79.490, 29.15.110, 29.15.100, 29.51.030, 29.85.110, 29.85.260, 29.85.240, 29.51.230, 29.51.215, 29.36.370, 29.85.100, 29.91.020, 29.91.060, and 43.07.310; reenacting RCW 29.01.005, 29.01.042, 29.01.047, 29.01.050, 29.01.060, 29.01.065, 29.01.068, 29.01.070, 29.01.080, 29.01.100, 29.01.113, 29.01.117, 29.01.119, 29.01.130, 29.01.135, 29.01.136, 29.01.155, 29.01.160, 29.01.200, 29.04.025, 29.04.091, 29.13.047, 29.60.030, 29.60.060,

29.60.070, 29.60.080, 29.60.090, 29.98.010, 29.98.030, 29.10.011, 29.08.060, 29.08.030, 29.07.160,
 29.07.230, 29.07.140, 29.08.040, 29.07.430, 29.07.440, 29.10.170, 29.10.097, 29.10.110, 29.10.180,
 29.10.015, 29.10.071, 29.10.075, 29.10.200, 29.10.210, 29.04.150, 29.04.240, 29.10.125, 29.10.130,
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 29.57.150, 29.24.020, 29.24.025, 29.24.030, 29.24.035, 29.24.045, 29.24.055, 29.24.060, 29.15.130,
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 29.15.210, 29.15.170, 29.15.180, 29.15.200, 29.15.230, 29.04.190, 29.68.070, 29.81.210, 29.81.220,
 29.81.230, 29.81.240, 29.81.250, 29.81.260, 29.81.280, 29.81.290, 29.81.300, 29.81A.030,
 29.81A.050, 29.81A.060, 29.81A.070, 29.81A.080, 29.27.020, 29.27.057, 29.27.061, 29.27.065,
 29.27.0653, 29.27.0655, 29.27.066, 29.27.0665, 29.27.067, 29.30.010, 29.30.020, 29.30.025,
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 29.36.230, 29.36.240, 29.36.270, 29.36.280, 29.36.290, 29.36.300, 29.36.310, 29.36.320, 29.36.340,
 29.36.350, 29.51.010, 29.51.180, 29.51.190, 29.54.037, 29.48.010, 29.13.080, 29.51.240, 29.48.030,
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 29.45.080, 29.45.090, 29.45.100, 29.45.110, 29.38.010, 29.38.020, 29.38.030, 29.38.050, 29.15.150,
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 29.19.020, 29.19.030, 29.19.045, 29.19.055, 29.19.080, 29.82.015, 29.82.023, 29.82.060, 29.82.090,
 29.82.100, 29.82.105, 29.82.130, 29.82.160, 29.71.020, 29.27.140, 29.74.020, 29.74.040, 29.74.050,
 29.74.080, 29.74.120, 29.74.140, 29.74.150, 29.62.180, 29.54.042, 29.54.050, 29.54.060, 29.54.097,
 29.54.105, 29.54.121, 29.54.170, 29.51.175, 29.27.120, 29.36.330, 29.64.015, 29.64.020, 29.64.030,
 29.64.035, 29.64.040, 29.64.051, 29.64.060, 29.64.080, 29.04.030, 29.65.050, 29.65.055, 29.65.070,
 29.65.120, 29.79.035, 29.79.040, 29.79.050, 29.79.060, 29.79.070, 29.79.140, 29.79.180, 29.79.190,
 29.79.200, 29.79.210, 29.79.270, 29.79.280, 29.79.290, 29.70.100, 29.15.026, 29.42.040,
 29.85.275, 29.07.400, 29.07.405, 29.07.410, 29.85.249, 29.15.080, 29.79.500, 29.85.040, 29.85.020,
 29.51.020, 29.51.221, 29.85.010, 29.85.051, 29.85.060, 29.85.070, 29.85.090, 29.85.210, 29.85.220,
 29.85.170, 29.85.225, 29.85.230, 29.91.010, 29.91.030, 29.91.040, 29.91.050, 29.13.023, and
 29.13.024; adding new sections to chapter 35.22 RCW; adding a new title to the Revised Code of
 Washington to be codified as Title 29A RCW; creating new sections; recodifying RCW 29.01.005,
 29.01.006, 29.01.008, 29.01.042, 29.01.043, 29.01.045, 29.01.047, 29.01.050, 29.01.055, 29.01.060,
 29.01.065, 29.01.068, 29.01.070, 29.01.080, 29.01.090, 29.01.100, 29.01.110, 29.01.113, 29.01.117,
 29.01.119, 29.01.120, 29.01.130, 29.01.135, 29.01.136, 29.01.137, 29.01.140, 29.01.155, 29.01.160,
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 29.60.090, 29.98.010, 29.98.020, 29.98.030, 29.04.080, 29.19.070, 29.60.020, 29.07.005, 29.04.095,
 29.10.011, 29.08.010, 29.07.010, 29.08.060, 29.07.110, 29.08.030, 29.07.220, 29.10.081, 29.07.092,
 29.07.160, 29.07.152, 29.07.030, 29.07.230, 29.07.070, 29.07.140, 29.07.080, 29.07.090, 29.08.080,
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 29.10.220, 29.10.075, 29.10.200, 29.10.210, 29.10.230, 29.04.250, 29.07.130, 29.04.100, 29.04.110,
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 29.04.035, 29.81.220, 29.81.230, 29.27.076, 29.81.240, 29.81.250, 29.81.260, 29.81.280, 29.81.290,
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 29.30.060, 29.30.081, 29.30.085, 29.30.086, 29.30.095, 29.30.101, 29.30.111, 29.30.130, 29.36.210,
 29.36.220, 29.36.230, 29.36.240, 29.36.250, 29.36.260, 29.36.270, 29.36.280, 29.36.290, 29.36.300,
 29.36.310, 29.36.320, 29.36.340, 29.36.350, 29.36.360, 29.51.010, 29.51.125, 29.51.180, 29.51.190,
 29.54.037, 29.48.010, 29.13.080, 29.51.240, 29.51.185, 29.48.030, 29.07.170, 29.48.035, 29.57.130,
 29.48.020, 29.48.070, 29.48.090, 29.48.100, 29.51.150, 29.51.050, 29.51.060, 29.51.100, 29.51.070,
 29.51.200, 29.54.018, 29.51.250, 29.54.010, 29.54.015, 29.07.180, 29.48.080, 29.48.045, 29.54.093,

29.51.115, 29.51.155, 29.45.010, 29.45.020, 29.45.030, 29.45.040, 29.45.050, 29.45.060, 29.45.065, 29.45.070, 29.45.080, 29.45.090, 29.45.100, 29.45.110, 29.45.120, 29.38.010, 29.38.020, 29.38.030, 29.38.040, 29.38.050, 29.38.060, 29.15.150, 29.18.010, 29.18.120, 29.18.200, 29.21.010, 29.21.015, 29.21.070, 29.21.410, 29.27.030, 29.27.050, 29.27.072, 29.27.074, 29.27.080, 29.27.100, 29.27.110, 29.19.010, 29.19.020, 29.19.030, 29.19.045, 29.19.055, 29.19.080, 29.82.010, 29.82.015, 29.82.021, 29.82.023, 29.82.025, 29.82.030, 29.82.040, 29.82.060, 29.82.080, 29.82.090, 29.82.100, 29.82.105, 29.82.110, 29.82.120, 29.82.130, 29.82.140, 29.82.160, 29.71.010, 29.71.020, 29.71.030, 29.71.040, 29.71.050, 29.27.140, 29.74.010, 29.74.020, 29.74.030, 29.74.040, 29.74.050, 29.74.060, 29.74.070, 29.74.080, 29.74.100, 29.74.110, 29.74.120, 29.74.130, 29.74.140, 29.74.150, 29.13.040, 29.62.180, 29.54.042, 29.54.050, 29.54.060, 29.54.097, 29.54.105, 29.54.121, 29.54.170, 29.51.175, 29.54.075, 29.54.085, 29.27.120, 29.62.030, 29.62.020, 29.54.025, 29.36.330, 29.62.040, 29.62.050, 29.62.080, 29.62.090, 29.62.100, 29.62.120, 29.62.130, 29.64.010, 29.64.015, 29.64.020, 29.64.030, 29.64.035, 29.64.040, 29.64.051, 29.64.060, 29.64.080, 29.64.090, 29.04.030, 29.65.010, 29.65.020, 29.65.040, 29.65.050, 29.65.055, 29.65.060, 29.65.070, 29.65.080, 29.65.090, 29.65.100, 29.65.120, 29.79.010, 29.79.015, 29.79.020, 29.79.030, 29.79.035, 29.79.040, 29.79.050, 29.79.060, 29.79.070, 29.79.080, 29.79.090, 29.79.100, 29.79.110, 29.79.115, 29.79.120, 29.79.140, 29.79.150, 29.79.160, 29.79.170, 29.79.180, 29.79.190, 29.79.200, 29.79.210, 29.79.230, 29.79.270, 29.79.280, 29.79.290, 29.79.300, 29.70.100, 29.15.026, 29.10.060, 29.04.140, 29.42.010, 29.42.020, 29.42.030, 29.42.040, 29.42.050, 29.42.070, 29.85.245, 29.82.210, 29.38.070, 29.85.275, 29.07.400, 29.07.405, 29.07.410, 29.85.249, 29.79.480, 29.82.220, 29.79.440, 29.82.170, 29.79.490, 29.15.080, 29.15.110, 29.79.500, 29.15.100, 29.85.040, 29.85.020, 29.51.020, 29.51.030, 29.51.221, 29.85.010, 29.85.110, 29.85.260, 29.85.051, 29.85.060, 29.85.070, 29.85.090, 29.85.210, 29.85.220, 29.85.240, 29.51.230, 29.51.215, 29.36.370, 29.85.100, 29.85.170, 29.85.225, 29.85.230, 29.91.010, 29.91.020, 29.91.030, 29.91.040, 29.91.050, 29.91.060, 29.13.023, and 29.13.024; repealing RCW 9.81.100, 29.01.010, 29.01.020, 29.01.030, 29.01.040, 29.01.087, 29.01.150, 29.04.210, 29.04.235, 29.07.100, 29.07.115, 29.07.120, 29.07.240, 29.07.280, 29.07.290, 29.07.300, 29.07.310, 29.07.320, 29.07.420, 29.07.450, 29.08.020, 29.08.050, 29.08.070, 29.08.090, 29.08.900, 29.13.021, 29.13.060, 29.15.046, 29.15.240, 29.15.800, 29.19.900, 29.36.900, 29.51.173, 29.57.170, 29.62.010, 29.62.015, 29.64.070, 29.64.900, 29.68.015, 29.68.016, 29.68.120, 29.74.090, 29.79.250, 29.81.270, 29.81.320, 29.81A.900, 29.81A.901, 29.91.900, 29.91.901, 29.98.050, and 43.01.015; prescribing penalties; providing an effective date; and providing an expiration date.

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

PART 1 GENERAL PROVISIONS

Subpart 1.1 Definitions

Sec. 101. RCW 29.01.005 and 1965 c 9 s 29.01.005 are each reenacted to read as follows:

SCOPE OF DEFINITIONS. Words and phrases as defined in this chapter, wherever used in Title 29 RCW, shall have the meaning as in this chapter ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part.

Sec. 102. RCW 29.01.006 and 1994 c 57 s 2 are each amended to read as follows:

BALLOT AND RELATED TERMS. As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "~~(Special)~~ Provisional ballot" means a ballot issued to a voter at the polling place on election day by the precinct election board, for one of the following reasons:

(a) The voter's name does not appear in the poll book;

(b) There is an indication in the poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote.

Sec. 103. RCW 29.01.008 and 1990 c 59 s 3 are each amended to read as follows:

CANVASSING. "Canvassing" means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of ~~((and prepare the certification for))~~ a primary or general election and includes the tabulation of any votes ~~((for that primary or election))~~ that were not tabulated at the precinct or in a counting center on the day of the primary or election.

Sec. 104. RCW 29.01.042 and 1999 c 158 s 1 are each reenacted to read as follows:

COUNTING CENTER. "Counting center" means the facility or facilities designated by the county auditor to count and canvass mail ballots, absentee ballots, and polling place ballots that are transferred to a central site to be counted, rather than being counted by a poll-site ballot counting device, on the day of a primary or election.

Sec. 105. RCW 29.01.043 and 1984 c 106 s 1 are each amended to read as follows:

COUNTY AUDITOR. "County auditor" ~~((includes))~~ means the county auditor in a noncharter county or the officer, irrespective of title, having the overall responsibility to maintain voter registration and to conduct state and local elections in a charter county.

Sec. 106. RCW 29.01.045 and 1987 c 346 s 3 are each amended to read as follows:

DATE OF MAILING. For registered voters voting by absentee or ~~((voting by))~~ mail ballot, "date of mailing" means the date of the postal cancellation on the envelope in which the ballot is returned to the election official by whom it

was issued. For all (~~other~~) nonregistered absentee voters, "date of mailing" means the date stated by the voter on the envelope in which the ballot is returned to the election official by whom it was issued.

Sec. 107. RCW 29.01.047 and 1987 c 346 s 4 are each reenacted to read as follows:

DISABLED VOTER. "Disabled voter" means any registered voter who qualifies for special parking privileges under RCW 46.16.381, or who is defined as blind under RCW 74.18.020, or who qualifies to require assistance with voting under RCW 29.51.200.

Sec. 108. RCW 29.01.050 and 1990 c 59 s 5 are each reenacted to read as follows:

ELECTION. "Election" when used alone means a general election except where the context indicates that a special election is included. "Election" when used without qualification does not include a primary.

Sec. 109. RCW 29.01.055 and 1986 c 167 s 1 are each amended to read as follows:

ELECTION BOARD. "Election board" means a group of election officers serving one precinct or (~~groups~~) a group of precincts in a polling place.

Sec. 110. RCW 29.01.060 and 1965 c 9 s 29.01.060 are each reenacted to read as follows:

ELECTION OFFICER. "Election officer" includes any officer who has a duty to perform relating to elections under the provisions of any statute, charter, or ordinance.

Sec. 111. RCW 29.01.065 and 1987 c 346 s 2 are each reenacted to read as follows:

ELECTOR. "Elector" means any person who possesses all of the qualifications to vote under Article VI of the state Constitution.

Sec. 112. RCW 29.01.068 and 1990 c 59 s 77 are each reenacted to read as follows:

FILING OFFICER. "Filing officer" means the county or state officer with whom declarations of candidacy for an office are required to be filed under this title.

Sec. 113. RCW 29.01.070 and 1965 c 9 s 29.01.070 are each reenacted to read as follows:

GENERAL ELECTION. "General election" means an election required to be held on a fixed date recurring at regular intervals.

Sec. 114. RCW 29.01.080 and 1992 c 7 s 31 are each reenacted to read as follows:

INFAMOUS CRIME. An "infamous crime" is a crime punishable by death in the state penitentiary or imprisonment in a state correctional facility.

Sec. 115. RCW 29.01.090 and 1977 ex.s. c 329 s 9 are each amended to read as follows:

MAJOR POLITICAL PARTY. "Major political party" means a political party of which at least one nominee for president, vice president, United States senator, or a statewide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year(~~:~~

~~PROVIDED, That any~~). A political party qualifying as a major political party under ((the previous subsection (2) or subsection (3) of this section prior to its 1977 amendment shall)) this section retains such status until ((after the next state general election following June 30, 1977)) the next even-year election at which a candidate of that party does not achieve at least five percent of the vote for one of the previously specified offices. If none of these offices appear on the ballot in an even-year general election, the major party retains its status as a major party through that election.

Sec. 116. RCW 29.01.100 and 1965 c 9 s 29.01.100 are each reenacted to read as follows:

MINOR POLITICAL PARTY. "Minor political party" means a political organization other than a major political party.

Sec. 117. RCW 29.01.110 and 1965 c 9 s 29.01.110 are each amended to read as follows:

MEASURES. "Measure" includes any proposition or question submitted to the voters ~~((of any specific constituency))~~.

Sec. 118. RCW 29.01.113 and 1987 c 346 s 5 are each reenacted to read as follows:

OUT-OF-STATE VOTER. "Out-of-state voter" means any elector of the state of Washington outside the state but not outside the territorial limits of the United States or the District of Columbia.

Sec. 119. RCW 29.01.117 and 1987 c 346 s 6 are each reenacted to read as follows:

OVERSEAS VOTER. "Overseas voter" means any elector of the state of Washington outside the territorial limits of the United States or the District of Columbia.

Sec. 120. RCW 29.01.119 and 1999 c 158 s 2 are each reenacted to read as follows:

POLL-SITE BALLOT COUNTING DEVICES. "Poll-site ballot counting device" means a device programmed to accept voted ballots at a polling place for the purpose of tallying and storing the ballots on election day.

Sec. 121. RCW 29.01.120 and 1965 c 9 s 29.01.120 are each amended to read as follows:

PRECINCT. "Precinct" means a geographical subdivision for voting purposes ~~((within or without the limits of a city or town, whether))~~ that is established by ((a board of county commissioners, by a city council, or by the board of supervisors of a township)) a county legislative authority.

Sec. 122. RCW 29.01.130 and 1965 c 9 s 29.01.130 are each reenacted to read as follows:

PRIMARY. "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.

Sec. 123. RCW 29.01.135 and 1979 ex.s. c 126 s 2 are each reenacted to read as follows:

QUALIFIED. "Qualified" when pertaining to a winner of an election means that for such election:

- (1) The results have been certified;
- (2) A certificate has been issued;

(3) Any required bond has been posted; and

(4) The winner has taken and subscribed an oath or affirmation in compliance with the appropriate statute, or if none is specified, that he or she will faithfully and impartially discharge the duties of the office to the best of his or her ability. This oath or affirmation shall be administered and certified by any officer or notary public authorized to administer oaths, without charge therefor.

Sec. 124. RCW 29.01.136 and 2001 c 225 s 1 are each reenacted to read as follows:

RECOUNT. "Recount" means the process of retabulating ballots and producing amended election returns based on that retabulation, even if the vote totals have not changed.

Sec. 125. RCW 29.01.137 and 1987 c 346 s 7 are each amended to read as follows:

REGISTERED VOTER. "Registered voter" means any elector who ~~((possesses all of the statutory qualifications to vote under chapters 29.07 and 29.10 RCW))~~ has completed the statutory registration procedures established by this title. The terms "registered voter" and "qualified elector" are synonymous.

Sec. 126. RCW 29.01.140 and 1971 ex.s. c 178 s 1 are each amended to read as follows:

RESIDENCE. "Residence" for the purpose of registering and voting means a person's permanent address where he or she physically resides and maintains his or her abode (~~(= PROVIDED, That)~~). However, no person gains residence by reason of his or her presence or loses his or her residence by reason of his or her absence:

(1) While employed in the civil or military service of the state or of the United States;

(2) While engaged in the navigation of the waters of this state or the United States or the high seas;

(3) While a student at any institution of learning;

(4) While confined in any public prison.

Absence from the state on business shall not affect the question of residence of any person unless the right to vote has been claimed or exercised elsewhere.

Sec. 127. RCW 29.01.155 and 1991 c 23 s 13 are each reenacted to read as follows:

SERVICE VOTER. "Service voter" means any elector of the state of Washington who is a member of the armed forces under 42 U.S.C. Sec. 1973 ff-6 while in active service, is a student or member of the faculty at a United States military academy, is a member of the merchant marine of the United States, is a program participant as defined in RCW 40.24.020, or is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

Sec. 128. RCW 29.01.160 and 1965 c 9 s 29.01.160 are each reenacted to read as follows:

SEPTEMBER PRIMARY. "September primary" means the primary election held in September to nominate candidates to be voted for at the ensuing election.

Sec. 129. RCW 29.01.170 and 1965 c 9 s 29.01.170 are each amended to read as follows:

SPECIAL ELECTION. "Special election" means any election that is not a general election and may be held in conjunction with a general election or primary.

Sec. 130. RCW 29.01.180 and 1975-76 2nd ex.s. c 120 s 14 are each amended to read as follows:

SHORT TERM. "Short term" means the brief period of time starting upon the completion of the certification of election returns and ending with the start of the full term ~~((on the second Tuesday of the next January immediately following the election))~~ and is applicable only when the office concerned is being held by an appointee to fill a vacancy ~~((which)).~~ The vacancy must have occurred after the last election(;) at which such office could have been voted upon for an unexpired term(, prior to the election for such office for the subsequent full term). Short term elections are always held in conjunction with elections for the full term for the office.

Sec. 131. RCW 29.01.200 and 1990 c 59 s 6 are each reenacted to read as follows:

VOTING SYSTEM, DEVICE, TALLYING SYSTEM. (1) "Voting system" means a voting device, vote tallying system, or combination of these together with ballots and other supplies or equipment used to conduct a primary or election or to canvass the votes cast in a primary or election;

(2) "Voting device" means a piece of equipment used for the purpose of or to facilitate the marking of a ballot to be tabulated by a vote tallying system or a piece of mechanical or electronic equipment used to directly record votes and to accumulate results for a number of issues or offices from a series of voters; and

(3) "Vote tallying system" means a piece of mechanical or electronic equipment and associated data processing software used to tabulate votes cast on ballot cards or otherwise recorded on a voting device or to prepare that system to tabulate ballot cards or count votes.

Subpart 1.2 General Provisions

Sec. 132. RCW 29.04.001 and 2001 c 41 s 1 are each amended to read as follows:

STATE POLICY. It is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud. ~~The election registration laws and the voting laws of the state of Washington(, and the requirements of chapter 41, Laws of 2001,)~~ must be administered without discrimination based upon race, creed, color, national origin, sex, or political affiliation.

Sec. 133. RCW 29.04.010 and 1965 c 9 s 29.04.010 are each amended to read as follows:

REGISTRATION REQUIRED FOR VOTING—EXCEPTION. Only a registered voter shall be permitted to vote:

- (1) At any election held for the purpose of electing persons to public office;
- (2) At any recall election of a public officer;
- (3) At any election held for the submission of a measure to any voting constituency;
- (4) At any primary election.

~~((The provisions of))~~ This section ((shall)) does not apply to ((township)) elections where being registered to vote is not a prerequisite to voting.

Sec. 134. RCW 29.04.020 and 1987 c 295 s 1 are each amended to read as follows:

COUNTY AUDITOR AS SUPERVISOR OF CERTAIN PRIMARIES AND ELECTIONS. The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; to appoint the precinct election officers((;)) and to provide for their compensation; to provide ~~((ballot boxes and ballots or voting machines, poll books, or precinct lists of registered voters, and tally sheets, and deliver them))~~ the supplies and materials necessary for the conduct of elections to the precinct election officers ((at the polling places)); and to publish and post notices of calling such primaries and elections in the manner provided by law((; PROVIDED, That)). The notice of a general election held in an even-numbered year ((shall)) must indicate that the office of precinct committee officer will be on the ballot((; and to)). The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections((; PROVIDED, That)). This section ((shall)) does not apply to general or special elections for any city, town, or district ((which)) that is not subject to RCW 29.13.010 and 29.13.020, but all such elections ((shall)) must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections.

Sec. 135. RCW 29.57.140 and 1999 c 298 s 18 are each amended to read as follows:

COUNTY AUDITOR—PUBLIC NOTICE OF AVAILABILITY OF SERVICES. The county auditor shall provide public notice of the availability of registration and voting aids, assistance to elderly and ~~((handicapped))~~ disabled persons, and procedures for voting by absentee ballot calculated to reach elderly and ~~((handicapped))~~ disabled persons not later than public notice of the closing of registration for a primary or election.

Sec. 136. RCW 29.04.025 and 1983 c 294 s 2 are each reenacted to read as follows:

HANDLING OF REPORTS FILED UNDER PUBLIC DISCLOSURE LAW. Each county auditor or county elections official shall ensure that reports filed pursuant to chapter 42.17 RCW are arranged, handled, indexed, and disclosed in a manner consistent with the rules of the public disclosure commission adopted under RCW 42.17.375.

Sec. 137. RCW 29.04.070 and 1994 c 57 s 4 are each amended to read as follows:

SECRETARY OF STATE AS CHIEF ELECTION OFFICER. The secretary of state through the election division shall be the chief election officer for all federal, state, county, city, town, and district elections ~~((and it shall be his or her duty to))~~ that are subject to this title. The secretary of state shall keep records of ((such)) elections held ((in the state and to)) for which he or she is required by law to canvass the results, make such records available to the public upon request, and ~~((to))~~ coordinate those state election activities required by federal law.

Sec. 138. RCW 29.04.060 and 1965 c 9 s 29.04.060 are each amended to read as follows:

PUBLICATION OF ELECTION LAWS BY SECRETARY OF STATE. ~~((In every year in which state and county officers are to be elected, the secretary of state shall cause the election laws of the state then in force to be published in pamphlet form and distributed through the county auditors at least twenty days prior to the primary next preceding the election in sufficient number to place a copy thereof in the hands of all officers of elections.))~~ The secretary of state shall ensure that each county auditor is provided with the most recent version of the election laws of the state, as contained in this title. Where amendments have been enacted after the last compilation of the election laws, he or she shall ensure that each county auditor receives a copy of those amendments before the next primary or election. The county auditor shall ensure that any statutory information necessary for the precinct election officers to perform their duties is supplied to them in a timely manner.

Sec. 139. RCW 29.04.085 and 2001 c 41 s 3 are each amended to read as follows:

INFORMATION IN FOREIGN LANGUAGES. In order to encourage the broadest possible voting participation by all eligible citizens, the secretary of state shall produce voter registration information in the foreign languages required of state agencies. ~~((This information must be available no later than January 1, 2002.))~~

Sec. 140. RCW 29.04.088 and 2001 c 41 s 4 are each amended to read as follows:

VOTER GUIDE. The secretary of state shall cause to be produced a "voter guide" detailing what constitutes voter fraud and discrimination under state election laws. This voter guide must be provided to every county election officer and auditor, and any other person upon request ~~((, no later than January 1, 2002)).~~

Sec. 141. RCW 29.04.091 and 2001 c 41 s 5 are each reenacted to read as follows:

TOLL-FREE MEDIA AND WEB PAGE. The secretary of state shall provide a toll-free media and web page designed to allow voter communication with the office of the secretary of state.

Sec. 142. RCW 29.04.230 and 1991 c 186 s 1 are each amended to read as follows:

ELECTRONIC FACSIMILE DOCUMENTS—ACCEPTANCE OF. The secretary of state or a county auditor shall accept and file in his or her office electronic facsimile transmissions of the following documents:

- (1) Declarations ~~((and affidavits))~~ of candidacy;

- (2) County canvass reports;
- (3) (~~(Candidates')~~) Voters' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a mandatory recount;
- (8) Requests for absentee ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under RCW 29.04.235.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

If the original copy of a document must be signed and a copy of the document is filed by facsimile transmission under this section, the original copy (~~(shall)~~) must be subsequently filed with the official with whom the facsimile was filed. The original copy (~~(shall)~~) must be filed by a deadline established by the secretary by rule. The secretary may by rule require that the original of any document, a copy of which is filed by facsimile transmission under this section, also be filed by a deadline established by the secretary by rule.

Subpart 1.3 Times for Holding Elections

Sec. 143. RCW 29.13.070 and 1977 ex.s. c 361 s 29 are each amended to read as follows:

PRIMARIES. Nominating primaries for general elections to be held in November (~~(shall)~~) must be held (~~(at the regular polling places in each precinct)~~) on the third Tuesday of the preceding September or on the seventh Tuesday immediately preceding such general election, whichever occurs first.

Sec. 144. RCW 29.13.010 and 1994 c 142 s 1 are each amended to read as follows:

STATE AND LOCAL GENERAL ELECTIONS—STATEWIDE GENERAL ELECTION—EXCEPTIONS—SPECIAL COUNTY ELECTIONS. (1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, district, and precinct officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A statewide general election shall be held on the first Tuesday after the first Monday of November of each year(~~(= PROVIDED, That)~~). However, the statewide general election held in odd-numbered years shall be limited to (a) city, town, and district general elections as provided for in RCW 29.13.020, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the Congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and

Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may, if it deems an emergency to exist, call a special county election by presenting a resolution to the county auditor at least forty-five days prior to the proposed election date. Except as provided in subsection (4) of this section, a special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The fourth Tuesday in April;
- (d) The third Tuesday in May;
- (e) The day of the primary as specified by RCW 29.13.070; or
- (f) The first Tuesday after the first Monday in November.

(3) In addition to the dates set forth in subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(4) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29.19 RCW, the date on which a special election may be called by the county legislative authority under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections except for those elections held pursuant to a home-rule charter adopted under Article XI, section 4 of the state Constitution. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer.

Sec. 145. RCW 29.13.020 and 2002 c 43 s 2 are each amended to read as follows:

CITY, TOWN, AND DISTRICT GENERAL AND SPECIAL ELECTIONS—EXCEPTIONS. (1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

- (a) Elections for the recall of any elective public officer;
- (b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;

(c) Consolidation proposals as provided for in RCW ((28A.315.280)) 28A.315.265 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor at least forty-five days prior to the proposed election date, may, if the county auditor deems an emergency to exist, call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Except as provided in subsection (3) of this section, such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The fourth Tuesday in April;
- (d) The third Tuesday in May;
- (e) The day of the primary election as specified by RCW 29.13.070; or
- (f) The first Tuesday after the first Monday in November.

(3) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29.19 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(4) In addition to subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)(e) and (f) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections.

Subpart 1.4 Election Costs

Sec. 146. RCW 29.13.045 and 1965 c 123 s 5 are each amended to read as follows:

ELECTION COSTS BORNE BY CONSTITUENCIES. Every city, town, and district ((shall be)) is liable for its proportionate share of the costs when such elections are held in conjunction with other elections held under RCW 29.13.010 and 29.13.020.

Whenever any city, town, or district ((shall)) holds any primary or election, general or special, on an isolated date, all costs of such elections ((shall)) must be borne by the city, town, or district concerned.

The purpose of this section is to clearly establish that the county is not responsible for any costs involved in the holding of any city, town, or district election.

In recovering such election expenses, including a reasonable pro-ration of administrative costs, the county auditor shall certify the cost to the county treasurer with a copy to the clerk or auditor of the city, town, or district concerned. Upon receipt of such certification, the county treasurer shall make the transfer from any available and appropriate city, town, or district funds to the county current expense fund or to the county election reserve fund if such a fund is established. Each city, town, or district (~~shall~~) must be promptly notified by the county treasurer whenever such transfer has been completed(~~(-PROVIDED, HOWEVER, That))~~. However, in those districts wherein a treasurer, other than the county treasurer, has been appointed such transfer procedure (~~shall~~) does not apply, but the district shall promptly issue its warrant for payment of election costs.

Sec. 147. RCW 29.13.047 and 1985 c 45 s 2 are each reenacted to read as follows:

STATE SHARE OF ELECTION COSTS. (1) Whenever state officers or measures are voted upon at a state primary or general election held in an odd-numbered year under RCW 29.13.010, the state of Washington shall assume a prorated share of the costs of that state primary or general election.

(2) Whenever a primary or vacancy election is held to fill a vacancy in the position of United States senator or United States representative under chapter 29.68 RCW, the state of Washington shall assume a prorated share of the costs of that primary or vacancy election.

(3) The county auditor shall apportion the state's share of these expenses when prorating election costs under RCW 29.13.045 and shall file such expense claims with the secretary of state.

(4) The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out this section. Reimbursements for election costs shall be from appropriations specifically provided by law for that purpose.

Sec. 148. RCW 29.13.048 and 1986 c 167 s 7 are each amended to read as follows:

INTEREST ON REIMBURSEMENT OF COSTS. For any reimbursement of election costs under RCW 29.13.047, the secretary of state shall pay interest at an annual rate equal to two percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in San Francisco on the fifteenth day of the month immediately preceding the payment for any period of time in excess of thirty days after the receipt of a properly executed and documented voucher for such expenses and the entry of an allotment from specifically appropriated funds for this purpose (~~under RCW 43.88.111~~). The secretary of state shall promptly notify any county that submits an incomplete or inaccurate voucher for reimbursement under RCW 29.13.047.

Subpart 1.5 Administration of Elections

Sec. 149. RCW 29.60.010 and 1992 c 163 s 3 are each amended to read as follows:

ELECTION ADMINISTRATION AND CERTIFICATION BOARD—
GENERALLY. (1) The Washington state election administration and

certification board is established and has the responsibilities and authorities prescribed by this chapter. The board is composed of the following members:

- (a) The secretary of state or the secretary's designee;
- (b) The state director of elections or the director's designee;
- (c) Four county auditors appointed by the Washington state association of county auditors or their alternates who are county auditors designated by the association to serve as such alternates, each appointee and alternate to serve at the pleasure of the association;
- (d) One member from each of the two largest political party caucuses of the house of representatives designated by and serving at the pleasure of the legislative leader of the respective caucus;
- (e) One member from each of the two largest political party caucuses of the senate designated by and serving at the pleasure of the legislative leader of the respective caucus; and
- (f) One representative from each major political party, (~~as defined by RCW 29.01.090,~~) designated by and serving at the pleasure of the chair of the party's state central committee.

(2) The board shall elect a chair from among its number; however, neither the secretary of state nor the state director of elections nor their designees may serve as the chair of the board. A majority of the members appointed to the board constitutes a quorum for conducting the business of the board. Chapter 42.30 RCW, the Open Public Meetings Act, and RCW 42.32.030 regarding minutes of meetings, apply to the meetings of the board.

(3) Members of the board shall serve without compensation. The secretary of state shall reimburse members of the board, other than those who are members of the legislature, for travel expenses in accordance with RCW 43.03.050 and 43.03.060. Members of the board who are members of the legislature shall be reimbursed as provided in chapter 44.04 RCW.

NEW SECTION. Sec. 150. APPEALS. The board created in RCW 29.60.010 shall review appeals filed under RCW 29.60.050 or 29.60.070. A decision of the board regarding the appeal must be supported by not less than a majority of the members appointed to the board. A decision of the board regarding an appeal filed under RCW 29.60.070 concerning an election review conducted under that section is final. If a decision of the board regarding an appeal filed under RCW 29.60.050 includes a recommendation that a certificate be issued, the secretary of state, upon the recommendation of the board, shall issue the certificate.

Sec. 151. RCW 29.60.030 and 2001 c 41 s 11 are each reenacted to read as follows:

DUTIES OF SECRETARY OF STATE. The secretary of state shall:

- (1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel, including training on the various types of election law violations and discrimination, and training programs for political party observers which conform to the rules for such programs established under RCW 29.60.020;
- (2) Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

(3) Maintain a record of those individuals who have received such training and certificates; and

(4) Provide the staffing and support services required by the board created under RCW 29.60.010.

Sec. 152. RCW 29.60.040 and 1992 c 163 s 6 are each amended to read as follows:

TRAINING OF ELECTION ADMINISTRATORS. A person having responsibility for the administration or conduct of elections, other than precinct election officers, shall, within eighteen months of undertaking those responsibilities (~~((or within eighteen months of July 1, 1993, whichever is later))~~), receive general training regarding the conduct of elections and specific training regarding their responsibilities and duties as prescribed by this title or by rules adopted by the secretary of state under this title. Included among those persons for whom such training is mandatory are the following:

(1) Secretary of state elections division personnel;

(2) County elections administrators under RCW 36.22.220;

(3) County canvassing board members;

(4) Persons officially designated by each major political party as elections observers; and

(5) Any other person or group charged with election administration responsibilities if the person or group is designated by rule adopted by the secretary of state as requiring the training.

The secretary of state shall reimburse election observers in accordance with RCW 43.03.050 and 43.03.060 for travel expenses incurred to receive training required under subsection (4) of this section.

Neither this section nor RCW 29.60.030 may be construed as requiring an elected official to receive training or a certificate of training as a condition for seeking or holding elective office or as a condition for carrying out constitutional duties.

Sec. 153. RCW 29.60.050 and 1992 c 163 s 7 are each amended to read as follows:

DENIAL OF CERTIFICATION—REVIEW AND APPEAL. (1) A decision of the secretary of state to deny certification under RCW 29.60.030 (~~((shall))~~) must be entered in the manner specified for orders under the Administrative Procedure Act, chapter 34.05 RCW. Such a decision (~~((shall))~~) is not (~~((be))~~) effective for a period of twenty days following the date of the decision, during which time the person denied certification may file a petition with the secretary of state requesting the secretary to reconsider the decision and to grant certification. The petitioner shall include(~~((;))~~) in the petition, an explanation of the reasons why the initial decision is incorrect and certification should be granted, and may include a request for a hearing on the matter. The secretary of state shall reconsider the matter if the petition is filed in a proper and timely manner. If a hearing is requested, the secretary of state shall conduct the hearing within sixty days after the date on which the petition is filed. The secretary of state shall render a final decision on the matter within ninety days after the date on which the petition is filed.

(2) Within twenty days after the date on which the secretary of state makes a final decision denying a petition under this section, the petitioner may appeal the

denial to the board created in RCW 29.60.010. In deciding appeals, the board shall restrict its review to the record established when the matter was before the secretary of state. The board shall affirm the decision if it finds that the record supports the decision and that the decision is not inconsistent with other decisions of the secretary of state in which the same standards were applied and certification was granted. Similarly, the board shall reverse the decision and recommend to the secretary of state that certification be granted if the board finds that such support is lacking or that such inconsistency exists.

(3) Judicial review of certification decisions (~~shall~~) will be as prescribed under RCW 34.05.510 through 34.05.598, but (~~shall be~~) is limited to the review of board decisions denying certification.

Sec. 154. RCW 29.60.060 and 1992 c 163 s 8 are each reenacted to read as follows:

ELECTION REVIEW SECTION. An election review section is established in the elections division of the office of the secretary of state. Permanent staff of the elections division, trained and certified as required by RCW 29.60.040, shall perform the election review functions prescribed by RCW 29.60.070. The staff may also be required to assist in training, certification, and other duties as may be assigned by the secretary of state to ensure the uniform and orderly conduct of elections in this state.

Sec. 155. RCW 29.60.070 and 1997 c 284 s 1 are each reenacted to read as follows:

REVIEW OF COUNTY ELECTION PROCEDURES. (1)(a) The election review staff of the office of the secretary of state shall conduct a review of election-related policies, procedures, and practices in an affected county or counties:

- (i) If the unofficial returns of a primary or general election for a position in the state legislature indicate that a mandatory recount is likely for that position; or
- (ii) If unofficial returns indicate a mandatory recount is likely in a statewide election or an election for federal office.

Reviews conducted under (ii) of this subsection shall be performed in as many selected counties as time and staffing permit. Reviews conducted as a result of mandatory recounts shall be performed between the time the unofficial returns are complete and the time the recount is to take place, if possible.

(b) In addition to conducting reviews under (a) of this subsection, the election review staff shall also conduct such a review in a county periodically, in conjunction with a county primary or special or general election, at the direction of the secretary of state or at the request of the county auditor. If any resident of this state believes that an aspect of a primary or election has been conducted inappropriately in a county, the resident may file a complaint with the secretary of state. The secretary shall consider such complaints in scheduling periodic reviews under this section.

(c) Before an election review is conducted in a county, the secretary of state shall provide the county auditor of the affected county and the chair of the state central committee of each major political party with notice that the review is to be conducted. When a periodic review is to be conducted in a county at the

direction of the secretary of state under (b) of this subsection, the secretary shall provide the affected county auditor not less than thirty days' notice.

(2) Reviews shall be conducted in conformance with rules adopted under RCW 29.60.020. In performing a review in a county under this chapter, the election review staff shall evaluate the policies and procedures established for conducting the primary or election in the county and the practices of those conducting it. As part of the review, the election review staff shall issue to the county auditor and the members of the county canvassing board a report of its findings and recommendations regarding such policies, procedures, and practices. A review conducted under this chapter shall not include any evaluation, finding, or recommendation regarding the validity of the outcome of a primary or election or the validity of any canvass of returns nor does the election review staff have any jurisdiction to make such an evaluation, finding, or recommendation under this title.

(3) The county auditor of the county in which a review is conducted under this section or a member of the canvassing board of the county may appeal the findings or recommendations of the election review staff regarding the review by filing an appeal with the board created under RCW 29.60.010.

Sec. 156. RCW 29.60.080 and 1992 c 163 s 10 are each reenacted to read as follows:

POWERS AND DUTIES OF COUNTY AUDITOR AND REVIEW STAFF. The county auditor may designate any person who has been certified under this chapter, other than the auditor, to participate in a review conducted in the county under this chapter. Each county auditor and canvassing board shall cooperate fully during an election review by making available to the reviewing staff any material requested by the staff. The reviewing staff shall have full access to ballot pages, absentee voting materials, any other election material normally kept in a secure environment after the election, and other requested material. If ballots are reviewed by the staff, they shall be reviewed in the presence of the canvassing board or its designees. Ballots shall not leave the custody of the canvassing board. During the review and after its completion, the review staff may make appropriate recommendations to the county auditor or canvassing board, or both, to bring the county into compliance with the training required under this chapter, and the laws or rules of the state of Washington, to safeguard election material or to preserve the integrity of the elections process.

Sec. 157. RCW 29.60.090 and 1992 c 163 s 11 are each reenacted to read as follows:

ELECTION ASSISTANCE AND CLEARINGHOUSE PROGRAM. The secretary of state shall establish within the elections division an election assistance and clearinghouse program, which shall provide regular communication between the secretary of state, local election officials, and major and minor political parties regarding newly enacted elections legislation, relevant judicial decisions affecting the administration of elections, and applicable attorney general opinions, and which shall respond to inquiries from elections administrators, political parties, and others regarding election information. This section does not empower the secretary of state to offer legal advice or opinions, but the secretary may discuss the construction or

interpretation of election law, case law, or legal opinions from the attorney general or other competent legal authority.

Subpart 1.6 Construction

Sec. 158. RCW 29.98.010 and 1965 c 9 s 29.98.010 are each reenacted to read as follows:

CONTINUATION OF EXISTING LAW. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

Sec. 159. RCW 29.98.020 and 1965 c 9 s 29.98.020 are each amended to read as follows:

CAPTIONS NOT PART OF LAW. ~~((Title headings,))~~ Chapter headings, part, subpart, and section or subsection ~~((headings))~~ captions, as used in this title do not constitute any part of the law.

Sec. 160. RCW 29.98.030 and 1965 c 9 s 29.98.030 are each reenacted to read as follows:

INVALIDITY OF PART OF TITLE NOT TO AFFECT REMAINDER. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected.

Subpart 1.7 Rule-making Authority

Sec. 161. RCW 29.04.080 and 1971 ex.s. c 202 s 2 are each amended to read as follows:

RULES BY SECRETARY OF STATE. The secretary of state as chief election officer shall make reasonable rules ~~((and regulations))~~ in accordance with chapter 34.05 RCW not inconsistent with the federal~~(;)~~ and state~~(; county, city, town, and district))~~ election laws to effectuate any provision of this title and to facilitate the execution of ~~((their))~~ its provisions in an orderly, timely, and uniform manner ~~((and))~~ relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures. ~~((He shall provide uniform regulations governing the maintenance of voter registration records on electronic or automatic data processing systems so that the records of counties using such systems shall be compatible. He shall supervise the development and use of such systems to insure that they conform to all the provisions of Title 29 RCW and the regulations provided for in this section.))~~

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;

(5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;

(6) Standards and procedures for the acceptance testing of voting systems by counties;

(7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;

(8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;

(9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;

(10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;

(11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;

(12) The use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;

(13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;

(14) The acceptance and filing of documents via electronic facsimile;

(15) Voter registration applications and records;

(16) The use of voter registration information in the conduct of elections;

(17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;

(18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;

(19) Procedures to receive and distribute voter registration applications by mail;

(20) Procedures for a voter to change his or her voter registration address within a county by telephone;

(21) Procedures for a voter to change the name under which he or she is registered to vote;

(22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;

(23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;

(24) Procedures and forms for declarations of candidacy;

(25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;

(26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;

(27) Filing for office;

(28) The order of positions and offices on a ballot;

(29) Sample ballots;

- (30) Independent evaluations of voting systems;
- (31) The testing, approval, and certification of voting systems;
- (32) The testing of vote tallying software programming;
- (33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;
- (34) Standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;
- (35) Uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections;
- (36) Standards and procedures to accommodate out-of-state voters, overseas voters, and service voters;
- (37) The tabulation of paper ballots before the close of the polls;
- (38) The accessibility of polling places and registration facilities that are accessible to elderly and disabled persons;
- (39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;
- (40) Procedures for conducting a statutory recount;
- (41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;
- (42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;
- (43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;
- (44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;
- (45) Procedures for the publication of a state voters' pamphlet; and
- (46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met.

Sec. 162. RCW 29.19.070 and 1995 1st sp.s. c 20 s 4 are each amended to read as follows:

PRESIDENTIAL PRIMARY RULES. The secretary of state as chief election officer may make rules in accordance with chapter 34.05 RCW to facilitate the operation, accomplishment, and purpose of ~~((this chapter))~~ the presidential primary authorized in RCW 29.19.010 through 29.19.080 (as recodified by this act). The secretary of state shall adopt rules consistent with this chapter to comply with national or state political party rules.

Sec. 163. RCW 29.60.020 and 1992 c 163 s 4 are each amended to read as follows:

POWERS AND DUTIES OF BOARD. (1) The secretary of state and the board created in RCW 29.60.010 shall jointly adopt rules, in the manner specified for the adoption of rules under the Administrative Procedure Act, chapter 34.05 RCW, governing:

(a) The training of persons officially designated by major political parties as elections observers under this title, and the training and certification of election administration officials and personnel;

(b) The policies and procedures for conducting election reviews under RCW 29.60.070; and

(c) The policies and standards to be used by the board in reviewing and rendering decisions regarding appeals filed under RCW 29.60.070.

~~((The initial policies and standards adopted under (c) of this subsection shall be adopted concurrently with adoption of the initial policies and procedures adopted under (b) of this subsection.~~

~~(2) The board created in RCW 29.60.010 shall review appeals filed under RCW 29.60.050 or 29.60.070. A decision of the board regarding such an appeal shall be supported by not less than a majority of the members appointed to the board. A decision of the board regarding an appeal filed under RCW 29.60.070 concerning an election review conducted under that section is final. If a decision of the board regarding an appeal filed under RCW 29.60.050 includes a recommendation that a certificate be issued, the certificate shall be issued by the secretary of state as recommended by the board.~~

~~(3)) (2) The board created in RCW 29.60.010 may adopt rules governing its procedures.~~

PART 2 VOTERS AND REGISTRATION

Subpart 2.1 Definitions

Sec. 201. RCW 29.07.005 and 1994 c 57 s 9 are each amended to read as follows:

DEFINITION. As used in this chapter: "Information required for voter registration" means the minimum information provided on a voter registration application that is required by the county auditor in order to place a voter registration applicant on the voter registration rolls. This information includes the applicant's name, complete residence address, date of birth, and a signature attesting to the truth of the information provided on the application. All other information supplied is ancillary and not to be used as grounds for not registering an applicant to vote.

Sec. 202. RCW 29.04.095 and 1973 1st ex.s. c 111 s 1 are each amended to read as follows:

DEFINITIONS. For purposes of ~~((RCW 29.04.100 through 29.04.120))~~ this chapter, the following words ~~((shall))~~ have the following meanings:

(1) ~~((("County auditor" means the county auditor in any noncharter county and in a charter county that county official having the overall responsibility to maintain voter registration information.~~

~~(2))~~ "Person" means an individual, partnership, joint venture, public or private corporation, association, state or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

~~((3))~~ (2) "Political purpose" means a purpose concerned with the support of or opposition to any candidate for any partisan or nonpartisan office or concerned with the support of or opposition to any ballot proposition or issue;

"political purpose" includes, but is not limited to, such activities as the advertising for or against any candidate or ballot measure or the solicitation of financial support.

Sec. 203. RCW 29.10.011 and 1994 c 57 s 33 are each reenacted to read as follows:

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

(1) "Verification notice" means a notice sent by the county auditor to a voter registration applicant and is used to verify or collect information about the applicant in order to complete the registration.

(2) "Acknowledgement notice" means a notice sent by nonforwardable mail by the county auditor to a registered voter to acknowledge a voter registration transaction, which can include initial registration, transfer, or reactivation of an inactive registration. An acknowledgement notice may be a voter registration card.

(3) "Confirmation notice" means a notice sent to a registered voter by first class forwardable mail at the address indicated on the voter's permanent registration record and to any other address at which the county auditor could reasonably expect mail to be received by the voter in order to confirm the voter's residence address. The confirmation notice must be designed so that the voter may update his or her current residence address.

Sec. 204. RCW 29.08.010 and 1994 c 57 s 30 are each amended to read as follows:

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

(1) "By mail" means delivery of a completed original voter registration application by mail or by personal delivery. ~~((The secretary of state, in consultation with the county auditors, may adopt rules to develop a process to receive and distribute these applications.))~~

(2) For voter registration applicants, "date of mailing" means the date of the postal cancellation on the voter registration application. This date will also be used as the date of application for the purpose of meeting the registration cutoff deadline. If the postal cancellation date is illegible then the date of receipt by the elections official is considered the date of application. If an application is received by the elections official by the close of business on the fifth day after the cutoff date for voter registration and the postal cancellation date is illegible, the application will be considered to have arrived by the cutoff date for voter registration.

Subpart 2.2 General Provisions

Sec. 205. RCW 29.07.010 and 1999 c 298 s 4 are each amended to read as follows:

COUNTY AUDITOR AS CHIEF REGISTRAR OF VOTERS, CUSTODIAN OF RECORDS—REGISTRATION ASSISTANTS. (1) In all counties, the county auditor shall be the chief registrar of voters for every precinct within the county. The auditor may appoint ~~((a registration assistant for each precinct or group of precincts and shall appoint city or town clerks as))~~

registration assistants to assist in registering persons residing in ~~((cities, towns, and rural precincts within))~~ the county.

~~((2))~~ In addition, the auditor may appoint a registration assistant for each common school. The auditor may appoint a registration assistant for each fire station.

~~(3)~~ A registration assistant must be a registered voter. ~~Except for city and town clerks,)~~ Each registration assistant holds office at the pleasure of the county auditor and must be a registered voter.

~~((4))~~ (2) The county auditor shall be the custodian of the official registration records of ~~((that))~~ the county. The county auditor shall ensure that mail-in voter registration application forms are readily available to the public at locations to include but not limited to the elections office, and all common schools, fire stations, and public libraries.

Sec. 206. RCW 29.08.060 and 1994 c 57 s 32 are each reenacted to read as follows:

AUDITOR'S PROCEDURE. (1) On receipt of an application for voter registration under this chapter, the county auditor shall review the application to determine whether the information supplied is complete. An application that contains the applicant's name, complete valid residence address, date of birth, and signature attesting to the truth of the information provided on the application is complete. If it is not complete, the auditor shall promptly mail a verification notice of the deficiency to the applicant. This verification notice shall require the applicant to provide the missing information. If the verification notice is not returned by the applicant or is returned as undeliverable the auditor shall not place the name of the applicant on the county voter list. If the applicant provides the required information, the applicant shall be registered to vote as of the date of mailing of the original voter registration application.

(2) If the information is complete, the applicant is considered to be registered to vote as of the date of mailing. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record. Within forty-five days after the receipt of an application but no later than seven days before the next primary, special election, or general election, the auditor shall send to the applicant, by first class mail, an acknowledgement notice identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable. If the applicant has indicated that he or she is registered to vote in another county in Washington but has also provided an address within the auditor's county that is for voter registration purposes, the auditor shall send, on behalf of the registrant, a registration cancellation notice to the auditor of that other county and the auditor receiving the notice shall cancel the registrant's voter registration in that other county. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration.

(3) If an acknowledgement notice card is properly mailed as required by this section to the address listed by the voter as being the voter's mailing address and the notice is subsequently returned to the auditor by the postal service as being

undeliverable to the voter at that address, the auditor shall promptly send the voter a confirmation notice. The auditor shall place the voter's registration on inactive status pending a response from the voter to the confirmation notice.

Sec. 207. RCW 29.07.110 and 1971 ex.s. c 202 s 15 are each amended to read as follows:

TRANSMITTAL OF REGISTRATION FORMS. Every ~~((deputy registrar located outside the county courthouse))~~ registration assistant shall keep registration supplies at his or her usual place of residence or usual place of business ~~((at reasonable hours and at the end of each week mail to the county auditor the cards of those who have registered during the week: PROVIDED, That with the written consent of the county auditor a deputy registrar may designate some centrally located place for registration in lieu of the usual place where registration supplies are kept by giving notice thereof in such manner as he may deem expedient stating therein the days and hours when the place will be open for registration: PROVIDED FURTHER, That such consent of the county auditor may include authorization for door to door registration including registration from a portable office as in a trailer and the person or persons so deputized may register all eligible electors residing in any precinct within the county concerned)).~~ A person or organization collecting voter registration application forms must transmit the forms to the secretary of state or a designee at least once weekly.

Sec. 208. RCW 29.08.030 and 1993 c 434 s 3 are each reenacted to read as follows:

REGISTRATION BY MAIL. Any elector of this state may register to vote by mail under this chapter.

Sec. 209. RCW 29.07.220 and 1993 c 408 s 11 are each amended to read as follows:

COMPUTER FILE OF VOTER REGISTRATION RECORDS—ESTABLISHMENT—DUTIES OF COUNTY AUDITOR. Each county auditor shall maintain a computer file ~~((on magnetic tape or disk, punched cards, or other form of data storage))~~ containing the records of all registered voters within the county. ~~((Where it is necessary or advisable,))~~ The auditor may provide for the establishment and maintenance of such files by private contract or through interlocal agreement as provided by chapter 39.34 RCW((; as it now exists or is hereafter amended)). The computer file ~~((shall))~~ must include, but not be limited to, each voter's last name, first name, middle initial, date of birth, residence address, ~~((sex))~~ gender, date of registration, applicable taxing district and precinct codes, and the last date on which the individual voted. The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain at least the last five such consecutive dates~~((; PROVIDED, That)).~~ If the voter has not voted at least five times since establishing his or her current registration record, only the available dates ((shall)) will be included.

Sec. 210. RCW 29.10.081 and 1994 c 57 s 40 are each amended to read as follows:

COUNT OF REGISTERED VOTERS. (1) Except as otherwise specified by this title, registered voters include those assigned to active and inactive status by the county auditor.

(2) Election officials shall not include inactive voters in the count of registered voters for the purpose of dividing precincts, creating vote-by-mail precincts, determining voter turnout, or other purposes in law for which the determining factor is the number of registered voters. Election officials shall not include persons who are ongoing absentee voters under RCW ((29.36.013)) 29.36.240 (as recodified by this act) in determining the maximum permissible size of vote-by-mail precincts or in determining the maximum permissible size of precincts. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29.62.090.

Sec. 211. RCW 29.07.092 and 2001 c 41 s 6 are each amended to read as follows:

NEW REGISTRATION OR TRANSFER—ACKNOWLEDGMENT—CANCELLATION OF PREVIOUS REGISTRATION. The county auditor shall acknowledge each new voter registration or transfer by providing or sending the voter a card identifying his or her current precinct and containing such other information as may be prescribed by the secretary of state. When a person who has previously registered to vote in a jurisdiction applies for voter registration in a new jurisdiction, the person shall provide on the registration form, all information needed to cancel any previous registration. The county auditor shall forward any information pertaining to the voter's prior voter registration to the county where the voter was previously registered, so that registration may be canceled. If the prior voter registration is in another state, the notification must be made to the state elections office of that state. A county auditor receiving official information that a voter has registered to vote in another jurisdiction shall immediately cancel that voter's registration.

Sec. 212. RCW 29.07.160 and 1993 c 383 s 2 are each reenacted to read as follows:

CLOSING REGISTRATION FILES—NOTICE. The registration files of all precincts shall be closed against original registration or transfers for thirty days immediately preceding every primary, special election, and general election to be held in such precincts.

The county auditor shall give notice of the closing of the precinct files for original registration and transfer and notice of the special registration and voting procedure provided by RCW 29.07.152 by one publication in a newspaper of general circulation in the county at least five days before the closing of the precinct files.

No person may vote at any primary, special election, or general election in a precinct polling place unless he or she has registered to vote at least thirty days before that primary or election. If a person, otherwise qualified to vote in the state, county, and precinct in which he or she applies for registration, does not register at least thirty days before any primary, special election, or general election, he or she may register and vote by absentee ballot for that primary or election under RCW 29.07.152.

Sec. 213. RCW 29.07.152 and 1993 c 383 s 1 are each amended to read as follows:

LATE REGISTRATION—SPECIAL PROCEDURE. This section establishes a special procedure which an elector may use to register to vote during the period beginning after the closing of registration for voting at the

polls under RCW 29.07.160 and ending on the fifteenth day before a primary, special election, or general election. ~~((During this period, the unregistered))~~ A qualified elector in the county may register to vote in person in the office of the county auditor or at a voter registration location specifically designated for this purpose by the county auditor of the county in which the applicant resides, and apply for an absentee ballot for that primary or election. The auditor or ~~((voter registrar))~~ registration assistant shall register that individual in the manner provided in this chapter. The application for an absentee ballot executed by the newly registered voter for the primary or election that follows the execution of the registration shall be promptly transmitted to the auditor with the completed voter registration form.

Sec. 214. RCW 29.07.030 and 1965 c 9 s 29.07.030 are each amended to read as follows:

EXPENSE OF REGISTRATION. The expense of registration in all rural precincts ~~((shall))~~ must be paid by the county~~(;)~~. The expense of registration in all precincts lying wholly within a city or town must be paid by the city or town. ~~((In precincts lying partly within and partly outside of a city or town, the expense of registration shall be apportioned between the county and city or town according to the number of voters registered in the precinct living within the city or town and the number living outside of it.))~~ Registration expenses for this section include both active and inactive voters.

Sec. 215. RCW 29.07.230 and 1980 c 32 s 6 are each reenacted to read as follows:

PAYMENT TO COUNTIES FOR MAINTENANCE OF VOTER REGISTRATION RECORDS ON ELECTRONIC DATA PROCESSING SYSTEMS. To compensate counties with fewer than ten thousand registered voters at the time of the most recent state general election for unrecoverable costs incident to the maintenance of voter registration records on electronic data processing systems, the secretary of state shall, in June of each year, pay such counties an amount equal to thirty cents for each registered voter in the county at the time of the most recent state general election.

Subpart 2.3 Forms

Sec. 216. RCW 29.07.070 and 1994 c 57 s 11 are each amended to read as follows:

VOTER QUALIFICATION INFORMATION—VERIFICATION NOTICE. ~~((Except as provided under RCW 29.07.260,))~~ An applicant for voter registration shall complete an application providing the following information concerning his or her qualifications as a voter in this state:

- (1) The address of the last former registration of the applicant as a voter in the state;
- (2) The applicant's full name;
- (3) The applicant's date of birth;
- (4) The address of the applicant's residence for voting purposes;
- (5) The mailing address of the applicant if that address is not the same as the address in subsection (4) of this section;
- (6) The sex of the applicant;

(7) A declaration that the applicant is a citizen of the United States; ~~((and))~~

(8) The applicant's signature; and

(9) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and prevent duplicate or fraudulent voter registrations.

This information shall be recorded on a single registration form to be prescribed by the secretary of state.

If the applicant fails to provide the information required for voter registration, the auditor shall send the applicant a verification notice. The auditor shall not register the applicant until the required information is provided. If a verification notice is returned as undeliverable or the applicant fails to respond to the notice within forty-five days, the auditor shall not register the applicant to vote.

The following warning shall appear in a conspicuous place on the voter registration form:

"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine of up to ten thousand dollars, or both imprisonment and fine."

Sec. 217. RCW 29.07.140 and 1994 c 57 s 18 are each reenacted to read as follows:

APPLICATION FORM—SINGLE COMPLETION—FURNISHED BY SECRETARY OF STATE. (1) The secretary of state shall specify by rule the format of all voter registration applications. These applications shall be compatible with existing voter registration records. An applicant for voter registration shall be required to complete only one application and to provide the required information other than his or her signature no more than one time. These applications shall also contain information for the voter to transfer his or her registration.

Any application format specified by the secretary for use in registering to vote in state and local elections shall satisfy the requirements of the National Voter Registration Act of 1993 (P.L. 103-31) for registering to vote in federal elections.

(2) The secretary of state shall adopt by rule a uniform data format for transferring voter registration records on machine-readable media.

(3) All registration applications required under RCW 29.07.070 and 29.07.260 shall be produced and furnished by the secretary of state to the county auditors and the department of licensing.

(4) The secretary of state shall produce and distribute any instructional material and other supplies needed to implement RCW 29.07.260 through 29.07.300 and 46.20.155.

(5) Any notice or statement that must be provided under the National Voter Registration Act of 1993 (P.L. 103-31) to prospective registrants concerning registering to vote in federal elections shall also be provided to prospective registrants concerning registering to vote under this title in state and local elections as well as federal elections.

Sec. 218. RCW 29.07.080 and 1994 c 57 s 12 are each amended to read as follows:

OATH OF APPLICANT. For all voter registrations (~~(executed under RCW 29.07.070)~~), the registrant shall sign the following oath:

"I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days immediately before the next election at which I vote, and I will be at least eighteen years old when I vote."

Sec. 219. RCW 29.07.090 and 1994 c 57 s 13 are each amended to read as follows:

SIGNATURE CARD. At the time of registering, a voter shall sign his or her name upon a signature card to be transmitted to the secretary of state. The voter shall also provide his or her first name followed by the last name or names and the name of the county in which he or she is registered. Once each week the county auditor shall transmit all such cards to the secretary of state. The secretary of state may exempt a county auditor who is providing electronic voter registration and electronic voter signature information to the secretary of state from the requirements of this section.

Sec. 220. RCW 29.08.080 and 2001 c 41 s 8 are each amended to read as follows:

FORMS—SUPPLIED WITHOUT COST—CITIZENSHIP. The secretary of state shall furnish registration forms necessary to carry out the registration of voters as provided by this chapter without cost to the respective counties. All voter registration forms (~~(printed after January 1, 2002,)~~) must include clear and conspicuous language, designed to draw an applicant's attention, stating that the applicant must be a United States citizen in order to register to vote.

Sec. 221. RCW 29.08.040 and 1993 c 434 s 4 are each reenacted to read as follows:

FORMS. The county auditor shall distribute forms by which a person may register to vote by mail and cancel any previous registration in this state. The county auditor shall keep a supply of voter registration forms in his or her office at all times for political parties and others interested in assisting in voter registration, and shall make every effort to make these forms generally available to the public. The county auditor shall provide voter registration forms to city and town clerks, state offices, schools, fire stations, and any other locations considered appropriate by the auditor for extending registration opportunities to all areas of the county. After the initial distribution of voter registration forms to a given location, a representative designated by the official in charge of that location shall notify the county auditor of the need for additional voter registration supplies.

Suhpart 2.4 Motor Voter and Registration at State Agencies

Sec. 222. RCW 29.07.025 and 2002 c 185 s 3 are each amended to read as follows:

VOTER REGISTRATION IN STATE OFFICES, COLLEGES. (1) The governor, in consultation with the secretary of state, shall designate agencies to provide voter registration services in compliance with federal statutes.

(2) Each state agency designated (~~under RCW 29.07.420~~) shall provide voter registration services for employees and the public within each office of that agency.

~~((2))~~ (3) The secretary of state shall design and provide a standard notice informing the public of the availability of voter registration, which notice shall be posted in each state agency where such services are available.

~~((3))~~ (4) The secretary of state shall design and provide standard voter registration forms for use by these state agencies.

~~((4))~~ (5) Each institution of higher education shall put in place an active prompt on its course registration web site, or similar web site that students actively and regularly use, that, if selected, will link the student to the secretary of state's voter registration web site. The prompt must ask the student if he or she wishes to register to vote.

Sec. 223. RCW 29.07.430 and 1994 c 57 s 27 are each reenacted to read as follows:

REGISTRATION OR TRANSFER AT DESIGNATED AGENCIES—FORM AND APPLICATION. (1) A person may register to vote or transfer a voter registration when he or she applies for service or assistance and with each renewal, recertification, or change of address at agencies designated under RCW 29.07.420,

(2) A prospective applicant shall initially be offered a form adopted by the secretary of state that is designed to determine whether the person wishes to register to vote. The form must comply with all applicable state and federal statutes regarding content.

The form shall also contain a box that may be checked by the applicant to indicate that he or she declines to register.

If the person indicates an interest in registering or has made no indication as to a desire to register or not register to vote, the person shall be given a mail-in voter registration application or a prescribed agency application as provided by RCW 29.07.440.

Sec. 224. RCW 29.07.440 and 2001 c 41 s 7 are each reenacted to read as follows:

REGISTRATION AT DESIGNATED AGENCIES—PROCEDURES. (1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents, including information about age and citizenship requirements for voter registration.

(3) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

(4) Each designated agency shall provide for the voter registration application forms to be collected from each agency office at least once each week. The agency shall then forward the application forms to the secretary of state each week. The secretary of state shall forward the forms to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were received by the secretary of state.

Sec. 225. RCW 29.07.260 and 2001 c 41 s 16 are each amended to read as follows:

REGISTRATION WITH DRIVER'S LICENSE APPLICATION OR RENEWAL. (1) A person may register to vote, transfer a voter registration, or change his or her name for voter registration purposes when he or she applies for or renews a driver's license or identification card under chapter 46.20 RCW.

(2) To register to vote, transfer his or her voter registration, or change his or her name for voter registration purposes under this section, the applicant shall provide the ((following:

- (a) ~~His or her full name;~~
- (b) ~~Whether the address in the driver's license file is the same as his or her residence for voting purposes;~~
- (c) ~~The address of the residence for voting purposes if it is different from the address in the driver's license file;~~
- (d) ~~His or her mailing address if it is not the same as the address in (c) of this subsection;~~
- (e) ~~Additional information on the geographic location of that voting residence if it is only identified by route or box;~~
- (f) ~~The last address at which he or she was registered to vote in this state;~~
- (g) ~~A declaration that he or she is a citizen of the United States; and~~
- (h) ~~Any other information, other than an applicant's social security number, that the secretary of state determines is necessary to establish the identity of the applicant and to prevent duplicate or fraudulent voter registrations)) information required by RCW 29.07.070 (as recodified by this act).~~

(3) ((The following warning shall appear in a conspicuous place on the voter registration form:

~~"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine of up to ten thousand dollars, or both imprisonment and fine."~~

(4) ~~The applicant shall sign a portion of the form that can be used as an initiative signature card for the verification of petition signatures by the secretary of state and shall sign and attest to the following oath:~~

~~"I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of a felony, I will have lived in Washington at this address for~~

~~thirty days before the next election at which I vote, and I will be at least eighteen years old when I vote."~~

(5)) The driver licensing agent shall record that the applicant has requested to register to vote or transfer a voter registration.

Sec. 226. RCW 29.07.270 and 1994 c 57 s 22 are each amended to read as follows:

DUTIES OF SECRETARY OF STATE, DEPARTMENT OF LICENSING, COUNTY AUDITORS—ADDRESS CHANGES. (1) The secretary of state shall provide for the voter registration forms submitted under RCW 29.07.260 to be collected from each driver's licensing facility within five days of their completion.

(2) The department of licensing shall produce and transmit to the secretary of state a machine-readable file containing the following information from the records of each individual who requested a voter registration or transfer at a driver's license facility during each period for which forms are transmitted under subsection (1) of this section: The name, address, date of birth, ~~((and sex))~~ gender of the applicant ~~((and))~~, the driver's license number, the date on which the application for voter registration or transfer was submitted, and the location of the office at which the application was submitted.

~~(3) ((The department of licensing shall provide information on all persons changing their address on change of address forms submitted to the department unless the voter has indicated that the address change is not for voting purposes. This information will be transmitted to the secretary of state each week in a machine-readable file containing the following information on persons changing their address: The name, address, date of birth, and sex of the applicant, the applicant's driver's license number, the applicant's former address, the county code for the applicant's former address, and the date that the request for address change was received.~~

~~(4) The secretary of state shall forward this information to the appropriate county each week. When the information indicates that the voter has moved within the county, the county auditor shall use the change of address information to transfer the voter's registration and send the voter an acknowledgement notice of the transfer. If the information indicates that the new address is outside the voter's original county, the county auditor shall send the voter a registration by mail form at the voter's new address and advise the voter of the need to reregister in the new county. The auditor shall then place the voter on inactive status)) The voter registration forms from the driver's licensing facilities must be forwarded to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were to be collected.~~

(4) For a voter registration application where the address for voting purposes is different from the address in the machine-readable file received from the department of licensing, the secretary of state shall amend the record of that application in the machine-readable file to reflect the county in which the applicant has registered to vote.

(5) The secretary of state shall sort the records in the machine-readable file according to the county in which the applicant registered to vote and produce a file of voter registration transactions for each county. The records of each county may be transmitted on or through whatever medium the county auditor

determines will best facilitate the incorporation of these records into the existing voter registration files of that county.

(6) The secretary of state shall produce a list of voter registration transactions for each county and transmit a copy of this list to that county with each file of voter registration transactions no later than ten days after the date on which that information was to be transmitted under subsection (1) of this section.

(7) If a registrant has indicated on the voter registration application form that he or she is registered to vote in another county in Washington but has also provided an address within the auditor's county that is for voter registration purposes, the auditor shall send, on behalf of the registrant, a registration cancellation notice to the auditor of that other county and the auditor receiving the notice shall cancel the registrant's voter registration in that other county. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration.

NEW SECTION. Sec. 227. ADDRESS CHANGES AT THE DEPARTMENT OF LICENSING. (1) The department of licensing shall provide information on all persons changing their address on change of address forms submitted to the department unless the voter has indicated that the address change is not for voting purposes. This information will be transmitted to the secretary of state each week in a machine-readable file containing the following information on persons changing their address: The name, address, date of birth, gender of the applicant, the applicant's driver's license number, the applicant's former address, the county code for the applicant's former address, and the date that the request for address change was received.

(2) The secretary of state shall forward this information to the appropriate county each week. When the information indicates that the voter has moved within the county, the county auditor shall use the change of address information to transfer the voter's registration and send the voter an acknowledgement notice of the transfer. If the information indicates that the new address is outside the voter's original county, the county auditor shall send the voter a registration by mail form at the voter's new address and advise the voter of the need to reregister in the new county. The auditor shall then place the voter on inactive status.

Subpart 2.5 Transfers and Name Changes

Sec. 228. RCW 29.10.020 and 1994 c 57 s 35 are each amended to read as follows:

ADDRESS CHANGE WITHIN COUNTY—TRANSFER BY TELEPHONE. To maintain a valid voter registration, a registered voter who changes his or her residence from one address to another within the same county shall transfer his or her registration to the new address in one of the following ways: (1) Sending to the county auditor a signed request stating the voter's present address and the address from which the voter was last registered; (2) appearing in person before the auditor and signing such a request; (3) transferring the registration in the manner provided by RCW 29.10.170; or (4) telephoning the county auditor to transfer the registration. The telephone call transferring a registration by telephone must be received by the auditor before

the precinct registration files are closed to new registrations for the next primary or special or general election in which the voter participates.

~~((The secretary of state may adopt rules facilitating the transfer of a registration by telephone authorized by this section:))~~

Sec. 229. RCW 29.10.040 and 1999 c 100 s 3 are each amended to read as follows:

REREGISTRATION ON TRANSFER TO ANOTHER COUNTY. A registered voter who changes his or her residence from one county to another county, shall be required to register anew. The voter shall sign an authorization to cancel his or her ~~((present))~~ current registration. An authorization to cancel a voter's registration must be forwarded promptly to the county auditor of the county in which the voter was previously registered. The county auditor of the county where the previous registration was made shall cancel the registration of the voter if it appears that the signatures in the registration record and on the cancellation authorization form were made by the same person.

Sec. 230. RCW 29.10.170 and 1991 c 81 s 28 are each reenacted to read as follows:

TRANSFER ON ELECTION DAY. (1) A person who is registered to vote in this state may transfer his or her voter registration on the day of a special or general election or primary under the following procedures:

(a) The voter may complete, at the polling place, a registration transfer form designed by the secretary of state and supplied by the county auditor; or

(b) The voter may write in his or her new residential address in the precinct list of registered voters.

The county auditor shall determine which of these two procedures are to be used in the county or may determine that both procedures are to be available to voters for use in the county.

(2) A voter who transfers his or her registration in the manner authorized by this section shall vote in the precinct in which he or she was previously registered.

(3) The auditor shall, within ninety days, mail to each voter who has transferred a registration under this section a notice of his or her current precinct and polling place.

Sec. 231. RCW 29.10.051 and 1994 c 57 s 37 are each amended to read as follows:

VOTER NAME CHANGE. To maintain a valid voter registration, a person who changes his or her name shall notify the county auditor regarding the name change in one of the following ways: (1) By sending the auditor a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence. Such a notice must be signed by the voter using both this former name and the voter's new name; (2) by appearing in person before the auditor or a registration assistant and signing such a change-of-name notice; (3) by signing such a change-of-name notice at the voter's precinct polling place on the day of a primary or special or general election; (4) by properly executing a name change on a mail-in registration application or a prescribed state agency application.

A properly registered voter who files a change-of-name notice at the voter's precinct polling place during a primary or election and who desires to vote at

that primary or election shall sign the poll book using the voter's former and new names in the same manner as is required for the change-of-name notice.

~~((The secretary of state may adopt rules facilitating the implementation of this section.))~~

Subpart 2.6 Cancellations

Sec. 232. RCW 29.10.090 and 1999 c 100 s 1 are each amended to read as follows:

CANCELLATION FOR DEATH. In addition to case-by-case maintenance under RCW 29.10.071 and 29.10.075 and the general program of maintenance of voter registration lists under RCW 29.10.180, deceased voters will be canceled from voter registration lists as follows:

(1) Every month, the registrar of vital statistics of the state shall prepare a separate list of persons who resided in each county, for whom a death certificate was transmitted to the registrar and was not included on a previous list, and shall supply the appropriate list to each county auditor.

A county auditor shall compare this list with the registration records and cancel the registrations of deceased voters within at least forty-five days before the next primary or election held in the county after the auditor receives the list.

(2) In addition, the county auditor may also use newspaper obituary articles as a source of information in order to cancel a voter's registration. The auditor must verify the identity of the voter by matching the voter's date of birth or an address. The auditor shall record the date and source of the obituary in the cancellation records.

(3) In addition, any registered voter may sign a statement, subject to the penalties of perjury, to the effect that to his or her personal knowledge or belief another registered voter is deceased. This statement may be filed with the county auditor. Upon the receipt of such signed statement, the county auditor shall cancel the registration records concerned and so notify the secretary of state. ~~((Upon receipt of such notice, the secretary of state shall in turn cancel his or her copy of said registration record.~~

~~The secretary of state as chief elections officer shall cause such form to be designed to carry out the provisions of this section. The county auditors shall have such forms available for public use. Further, each such public officer having jurisdiction of an election shall make available a reasonable supply of such forms for the use of the precinct election officers at each polling place on the day of an election.))~~

Sec. 233. RCW 29.10.097 and 1994 c 57 s 42 are each reenacted to read as follows:

CANCELLATION FOR CONVICTION OF FELONY. Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person is a registered voter in the county, the county auditor shall cancel the defendant's voter registration.

Sec. 234. RCW 29.10.100 and 1999 c 298 s 8 are each amended to read as follows:

WEEKLY REPORT OF CANCELLATIONS AND NAME CHANGES. Once each week after the cancellation of the registration of any voter or the

change of name of a voter, each county auditor shall certify all cancellations or name changes to the secretary of state. The certificate shall set forth the name of each voter whose registration has been canceled or whose name was changed, and the county, city or town, and precinct in which the voter was registered. A county may be exempted from this requirement by entering into an interlocal agreement with the secretary of state.

Sec. 235. RCW 29.10.110 and 1991 c 81 s 26 are each reenacted to read as follows:

RECORD OF CANCELLATIONS. Every county auditor shall carefully preserve in a separate file or list the registration records of persons whose voter registrations have been canceled as authorized under this title. The files or lists shall be kept in the manner prescribed by rule by the secretary of state. Information from such canceled registration records is available for public inspection and copying to the same extent established by RCW 29.07.130 for other voter registration information.

The county auditor may destroy the voter registration information and records of any person whose voter registration has been canceled for a period of two years or more.

Subpart 2.7 List Maintenance

Sec. 236. RCW 29.10.180 and 1999 c 100 s 2 are each reenacted to read as follows:

GENERAL PROGRAM. In addition to the case-by-case maintenance required under RCW 29.10.071 and 29.10.075 and the canceling of registrations under RCW 29.10.090, the county auditor shall establish a general program of voter registration list maintenance. This program must be a thorough review that is applied uniformly throughout the county and must be nondiscriminatory in its application. Any program established must be completed at least once every two years and not later than ninety days before the date of a primary or general election for federal office. The county may fulfill its obligations under this section in one of the following ways:

(1) The county auditor may enter into one or more contracts with the United States postal service, or its licensee, which permit the auditor to use postal service change-of-address information. If the auditor receives change of address information from the United States postal service that indicates that a voter has changed his or her residence address within the county, the auditor shall transfer the registration of that voter and send a confirmation notice informing the voter of the transfer to the new address. If the auditor receives postal change of address information indicating that the voter has moved out of the county, the auditor shall send a confirmation notice to the voter and advise the voter of the need to reregister in the new county. The auditor shall place the voter's registration on inactive status;

(2) A direct, nonforwardable, nonprofit or first-class mailing to every registered voter within the county bearing the postal endorsement "Return Service Requested." If address correction information for a voter is received by the county auditor after this mailing, the auditor shall place that voter on inactive status and shall send to the voter a confirmation notice;

(3) Any other method approved by the secretary of state.

Sec. 237. RCW 29.10.185 and 2001 c 41 s 10 are each amended to read as follows:

DUAL REGISTRATION OR VOTING DETECTION. In addition to the case-by-case cancellation procedure required in RCW 29.10.040, the county auditor, in conjunction with the office of the secretary of state, shall participate in an annual list maintenance program designed to detect persons registered in more than one county or voting in more than one county in an election. This program must be applied uniformly throughout the county and must be nondiscriminatory in its application. The program must be completed not later than thirty days before the date of a primary or general election.

The office of the secretary of state shall cause to be created a list of registered voters with the same date of birth and similar names who appear on two or more county lists of registered voters. The office of the secretary of state shall forward this list to each county auditor so that they may properly cancel the previous registration of voters who have subsequently registered in a different county. The county auditor of the county where the previous registration was made shall cancel the registration of the voter if it appears that the signatures in the registration and the signature provided to the new county on the voter's new registration were made by the same person. ~~((The office of the secretary of state shall adopt rules to facilitate this process.))~~

If a voter is suspected of voting in two or more counties in an election, the county auditors in each county shall cooperate without delay to determine the voter's county of residence. The county auditor of the county of residence of the voter suspected of voting in two or more counties shall take action under RCW 29.85.245 without delay.

Sec. 238. RCW 29.10.015 and 1994 c 57 s 34 are each reenacted to read as follows:

"ACTIVE," "INACTIVE" REGISTERED VOTERS. Registered voters are divided into two categories, "active" and "inactive." All registered voters are classified as active, unless assigned to inactive status by the county auditor.

Sec. 239. RCW 29.10.071 and 1994 c 57 s 38 are each reenacted to read as follows:

ASSIGNMENT OF VOTER TO INACTIVE STATUS—CONFIRMATION NOTICE. (1) A county auditor shall assign a registered voter to inactive status and shall send the voter a confirmation notice if any of the following documents are returned by the postal service as undeliverable:

- (a) An acknowledgement of registration;
- (b) An acknowledgement of transfer to a new address;
- (c) A vote-by-mail ballot, absentee ballot, or application for a ballot;
- (d) Notification to a voter after precinct reassignment;
- (e) Notification to serve on jury duty; or
- (f) Any other document other than a confirmation notice, required by statute, to be mailed by the county auditor to the voter.

(2) A county auditor shall also assign a registered voter to inactive status and shall send the voter a confirmation notice:

- (a) Whenever change of address information received from the department of licensing under RCW 29.07.270, or by any other agency designated to

provide voter registration services under RCW 29.07.420, indicates that the voter has moved to an address outside the county; or

(b) If the auditor receives postal change of address information under RCW 29.10.180, indicating that the voter has moved out of the county.

Sec. 240. RCW 29.10.220 and 1994 c 57 s 47 are each amended to read as follows:

VOTING BY INACTIVE OR CANCELED VOTERS. (1) A voter whose registration has been made inactive under this chapter and who offers to vote at an ensuing election before two federal elections have been held ~~((shall))~~ **must** be allowed to vote a regular ballot and the voter's registration restored to active status.

(2) A voter whose registration has been properly canceled under this chapter shall vote a ~~((special))~~ **provisional** ballot. The voter shall mark the ~~((special))~~ **provisional** ballot in secrecy, the ballot ~~((shall be))~~ placed in a security envelope, the security envelope placed in a ~~((special))~~ **provisional** ballot envelope, and the reasons for the use of the ~~((special))~~ **provisional** ballot noted.

(3) Upon receipt of such a voted ~~((special))~~ **provisional** ballot the auditor shall investigate the circumstances surrounding the original cancellation. If he or she determines that the cancellation was in error, the voter's registration ~~((shall))~~ **must** be immediately reinstated, and the voter's ~~((special))~~ **provisional** ballot ~~((shall))~~ **must** be counted. If the original cancellation was not in error, the voter ~~((shall))~~ **must** be afforded the opportunity to reregister at his or her correct address, and the voter's ~~((special))~~ **provisional** ballot ~~((shall))~~ **must** not be counted.

Sec. 241. RCW 29.10.075 and 1994 c 57 s 39 are each reenacted to read as follows:

RETURN OF INACTIVE VOTER TO ACTIVE STATUS— CANCELLATION OF REGISTRATION. The county auditor shall return an inactive voter to active voter status if, during the period beginning on the date the voter was assigned to inactive status and ending on the day of the second general election for federal office that occurs after the date that the voter was sent a confirmation notice, the voter: Notifies the auditor of a change of address within the county; responds to a confirmation notice with information that the voter continues to reside at the registration address; votes or attempts to vote in a primary or a special or general election and resides within the county; or signs any petition authorized by statute for which the signatures are required by law to be verified by the county auditor. If the inactive voter fails to provide such a notice or take such an action within that period, the auditor shall cancel the person's voter registration.

Sec. 242. RCW 29.10.200 and 1994 c 57 s 45 are each reenacted to read as follows:

CONFIRMATION NOTICES—FORM, CONTENTS. Confirmation notices must be on a form prescribed by, or approved by, the secretary of state and must request that the voter confirm that he or she continues to reside at the address of record and desires to continue to use that address for voting purposes. The notice must inform the voter that if the voter does not respond to the notice and does not vote in either of the next two federal elections, his or her voter registration will be canceled.

Sec. 243. RCW 29.10.210 and 1994 c 57 s 46 are each reenacted to read as follows:

CONFIRMATION NOTICE—RESPONSE, AUDITOR'S ACTION. If the response to the confirmation notice provides the county auditor with the information indicating that the voter has moved within the county, the auditor shall transfer the voter's registration. If the response indicates that the voter has left the county, the auditor shall cancel the voter's registration.

Sec. 244. RCW 29.10.230 and 1999 c 100 s 5 are each amended to read as follows:

ELECTRONIC FILE FORMAT. The secretary of state shall create a standard electronic file format (state transfer form) to be used for the transfer of voter registration information between county auditors and the office of the secretary of state. The format must be prescribed by rule and contain at least the following information: Voter name, address, date of birth, date of registration, mailing address, legislative and congressional district, and digitized signature image. Each county shall program its voter registration system to convert this data from the county's storage format into the state transfer format. ~~((Every county shall complete this work by January 1, 2000. Each county may bill reasonable programming costs incurred by it to the office of the secretary of state by June 1, 2000.))~~

Sec. 245. RCW 29.04.250 and 2002 c 21 s 2 are each amended to read as follows:

VOTER REGISTRATION DATA BASE. (1) The office of the secretary of state shall work in conjunction with the county auditors of the state of Washington to initiate the creation of a statewide voter registration data base. The secretary of state shall identify a group of voter registration experts whose responsibility will be to work on a design for the voter registration data base system. ~~((The secretary of state shall report back the findings of this group to the legislature no later than February 1, 2003.))~~

(2) Among the intended goals the voter registration data base must be designed to accomplish at a minimum, are the following:

- (a) Identify duplicate voter registrations;
- (b) Identify suspected duplicate voters;
- (c) Screen against the department of corrections data base to aid in the cancellation of voter registration of felons;
- (d) Provide up-to-date signatures of voters for the purposes of initiative signature checking;
- (e) Provide for a comparison between the voter registration data base and the department of licensing change of address data base;
- (f) Provide online access for county auditors with the goal of real time duplicate checking and update capabilities, if sufficient funds are available;
- (g) Provide for the cancellation of voter registration for persons who have moved to other states and surrendered their Washington state drivers' licenses;
- (h) Ensure that each county shall maintain legal control of the registration records for that county.

Suhpart 2.8
Public Access to Registration Records

Sec. 246. RCW 29.07.130 and 1994 c 57 s 17 are each amended to read as follows:

REGISTRATION RECORDS—ORIGINALS AND AUTOMATED FILES—PUBLIC ACCESS. (1) ~~((The cards required by RCW 29.07.090 shall be kept on file in the office of the secretary of state in such manner as will be most convenient for, and for the sole purpose of, checking initiative and referendum petitions. The secretary may maintain an automated file of voter registration information for any county or counties in lieu of filing or maintaining these voter registration cards if the automated file includes all of the information from the cards including, but not limited to, a retrievable facsimile of the signature of each voter of that county or counties. Such an automated file may be used only for the purpose authorized for the use of the cards.~~

(2)) The county auditor shall have custody of the voter registration records for each county. The original voter registration form ~~(, as established by RCW 29.07.070, shall)~~ must be filed ~~((alphabetically))~~ without regard to precinct and ~~((shall be))~~ is considered confidential and unavailable for public inspection and copying. An automated file of all registered voters ~~((shall))~~ must be maintained pursuant to RCW 29.07.220. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

~~((3))~~ (2) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying: The voter's name, gender, voting record, date of registration, and registration number. The address and political jurisdiction of a registered voter ~~((or addresses of a group of voters))~~ are available for public inspection and copying except ~~((to the extent that the address of a particular voter is not so available under RCW 42.17.310(1)(bb). The political jurisdictions within which a voter or group of voters reside are also available for public inspection and copying except that the political jurisdictions within which a particular voter resides are not available for such inspection and copying if the address of the voter is not so available under RCW 42.17.310(1)(bb)))~~ as provided by chapter 40.24 RCW. No other information from voter registration records or files is available for public inspection or copying.

Sec. 247. RCW 29.04.100 and 1994 c 57 s 5 are each amended to read as follows:

REGISTRATION, VOTING RECORDS—AS PUBLIC RECORDS—INFORMATION FURNISHED—RESTRICTIONS, CONFIDENTIALITY. (1) In the case of voter registration records received through the department of licensing, the identity of the office at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. In the case of voter registration records received through an agency designated under RCW 29.07.420, the identity of the agency at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state

agency designated under RCW 29.07.420 is not available for public inspection and any information regarding such a choice by a particular individual shall not be disclosed to the public.

(2) All poll books or current lists of registered voters, except original voter registration forms or their images, shall be public records and be made available for inspection under such reasonable rules and regulations as the county auditor may prescribe. The county auditor shall promptly furnish current lists or mailing labels of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information(~~(= PROVIDED, That such)~~). The lists and labels shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value(= PROVIDED, HOWEVER, That such)). However, the lists and labels may be used for any political purpose.

Sec. 248. RCW 29.04.110 and 1994 c 57 s 6 are each amended to read as follows:

REGISTRATION, VOTING—FURNISHING DATA UPON REQUEST—COST—USE RESTRICTED. Except original voter registration forms or their images, a reproduction of any form of data storage, in the custody of the county auditor, including poll books and precinct lists of registered voters, magnetic tapes or discs, punched cards, and any other form of storage of such books and lists, shall at the written request of any person be furnished to him or her by the county auditor pursuant to such reasonable rules and regulations as the county auditor may prescribe, and at a cost equal to the county's actual cost in reproducing such form of data storage. Any data contained in a form of storage furnished under this section shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product or service or for the purpose of mailing or delivering any solicitation for money, services or anything of value(~~(= PROVIDED, HOWEVER, That such)~~). However, the data may be used for any political purpose. Whenever the county auditor furnishes any form of data storage under this section, he or she shall also furnish the person receiving the same with a copy of RCW 29.04.120.

Sec. 249. RCW 29.04.120 and 1999 c 298 s 2 are each amended to read as follows:

VIOLATIONS OF RESTRICTED USE OF REGISTERED VOTER DATA—PENALTIES—LIABILITIES. (1) Any person who uses registered voter data furnished under RCW 29.04.100 or 29.04.110 for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value (~~(shall be)~~) is guilty of a felony punishable by imprisonment in a state correctional facility for a period of not more than five years or a fine of not more than ten thousand dollars or both such fine and imprisonment, and (~~(shall be)~~) is liable to each person provided such advertisement or solicitation, without the person's consent, for the nuisance value of such person having to dispose of it, which value is herein established at five dollars for each item mailed or delivered to the person's residence(~~(= PROVIDED, That any)~~). However, a person who mails or delivers any

advertisement, offer, or solicitation for a political purpose (~~shall~~) is not (~~be~~) liable under this section (~~;~~) unless the person is liable under subsection (2) of this section. For purposes of this subsection, two or more attached papers or sheets or two or more papers (~~which~~) that are enclosed in the same envelope or container or are folded together (~~shall be deemed to constitute~~) are one item. Merely having a mailbox or other receptacle for mail on or near the person's residence (~~shall~~) is not (~~be any~~) an indication that (~~such~~) the person consented to receive the advertisement or solicitation. A class action may be brought to recover damages under this section, and the court may award a reasonable attorney's fee to any party recovering damages under this section.

(2) (~~It shall be the responsibility of~~) Each person furnished data under RCW 29.04.100 or 29.04.110 (~~to~~) shall take reasonable precautions designed to assure that the data is not used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value (~~;~~ ~~PROVIDED, That such~~). However, the data may be used for any political purpose. Where failure to exercise due care in carrying out this responsibility results in the data being used for such purposes, then such person (~~shall be~~) is jointly and severally liable for damages under (~~the provisions of~~) subsection (1) of this section along with any other person liable under subsection (1) of this section for the misuse of such data.

Sec. 250. RCW 29.04.150 and 1993 c 441 s 1 are each reenacted to read as follows:

COMPUTER FILE OF REGISTERED VOTERS—COUNTY RECORDS TO SECRETARY OF STATE—REIMBURSEMENT. (1) No later than June 15th or November 15th, any political party organization or any other individual may request in writing from the secretary of state to receive a copy of the subsequent statewide computer file of registered voters compiled under subsection (2) of this section. At the time it makes this request, the political party or individual shall deposit sufficient funds with the secretary of state to pay for the cost of assembling, compiling, and distributing the computer file of registered voters and shall agree to the statutory restrictions regarding the commercial use of this data.

(2) Not earlier than January 1st or July 1st subsequent to the receipt of a request and deposit under subsection (1) of this section, each county auditor shall provide to the secretary of state, or a data processing agency designated by the secretary of state, a duplicate computer tape or data file of the records of the registered voters in that county, containing the information specified in RCW 29.07.220. The secretary of state shall reimburse each county for the actual cost of reproduction and mailing of the duplicate computer tape or data file.

Sec. 251. RCW 29.04.160 and 1995 c 135 s 2 are each amended to read as follows:

COMPUTER FILE—DUPLICATE COPY—RESTRICTIONS AND PENALTIES. As soon as any or all of the voter registration data from the counties has been received under RCW 29.04.150 and processed, the secretary of state shall provide a duplicate copy of this data to the political party organization or other individual making the request, at cost, shall provide a duplicate copy of the master statewide computer tape or data file of registered

voters to the statute law committee without cost, and shall provide a duplicate copy of the master statewide computer tape or electronic data file of registered voters to the department of information services for purposes of creating the jury source list without cost. Restrictions as to the commercial use of the information on the statewide computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW 29.04.110 and 29.04.120 (~~as now existing or hereafter amended~~)).

Sec. 252. RCW 29.04.240 and 1994 c 57 s 7 are each reenacted to read as follows:

RECORDS CONCERNING ACCURACY AND CURRENCY OF VOTERS LISTS. Each county auditor shall maintain for at least two years and shall make available for public inspection and copying all records concerning the implementation of programs and activities conducted for the purpose of insuring the accuracy and currency of official lists of eligible voters. These records must include lists of the names and addresses of all persons to whom notices are sent and information concerning whether or not each person has responded to the notices. These records must contain lists of all persons removed from the list of eligible voters and the reasons why the voters were removed.

Subpart 2.9 Challenges

Sec. 253. RCW 29.10.125 and 2001 c 41 s 9 are each reenacted to read as follows:

CHALLENGE OF REGISTRATION—INITIATION. Registration of a person as a voter is presumptive evidence of his or her right to vote at any primary or election, general or special. A person's right to vote may be challenged at the polls only by a precinct judge or inspector. A challenge may be made only upon the belief or knowledge of the challenging officer that the voter is unqualified. The challenge must be supported by evidence or testimony given to the county canvassing board under RCW 29.10.127 and may not be based on unsupported allegations or allegations by anonymous third parties. The identity of the challenger, and any third person involved in the challenge, shall be public record and shall be announced at the time the challenge is made.

Challenges initiated by a registered voter must be filed not later than the day before any primary or election, general or special, at the office of the appropriate county auditor. A challenged voter may properly transfer or reregister until three days before the primary or election, general or special, by applying personally to the county auditor. Challenges may also be initiated by the office of the county prosecuting attorney and must be filed in the same manner as challenges initiated by a registered voter.

Sec. 254. RCW 29.10.127 and 1987 c 288 s 2 are each amended to read as follows:

CHALLENGE—VOTING BY PERSON CHALLENGED—BURDEN OF PROOF, PROCEDURES. When the right of a person has been challenged under RCW 29.10.125 or 29.10.130(2), the challenged person shall be permitted to vote a ballot which shall be placed in a sealed envelope separate from other voted ballots. In precincts where voting machines are used, any person whose right to vote is challenged under RCW 29.10.125 or 29.10.130(2) shall be

furnished a paper ballot, which shall be placed in a sealed envelope after being marked. Included with the challenged ballot shall be (1) an affidavit filed under RCW 29.10.130 challenging the person's right to vote or (2) an affidavit signed by the precinct election officer and any third party involved in the officer's challenge and stating the reasons the voter is being challenged. The sealed ballots of challenged voters shall be transmitted at the close of the election to the canvassing board or other authority charged by law with canvassing the returns of the particular primary or election. The county auditor shall notify the challenger and the challenged voter, by certified mail, of the time and place at which the county canvassing board will meet to rule on challenged ballots. If the challenge is made by a precinct election officer under RCW 29.10.125, the officer must appear in person before the board unless he or she has received written authorization from the canvassing board to submit an affidavit supporting the challenge. If the challenging officer has based his or her challenge upon evidence provided by a third party, that third party must appear with the challenging officer before the canvassing board, unless he or she has received written authorization from the canvassing board to submit an affidavit supporting the challenge. If the challenge is filed under RCW 29.10.130, the challenger must either appear in person before the board or submit an affidavit supporting the challenge. The challenging party must prove to the canvassing board by clear and convincing evidence that the challenged voter's registration is improper. If the challenging party fails to meet this burden, the challenged ballot shall be accepted as valid and counted. The canvassing board shall give the challenged voter the opportunity to present testimony, either in person or by affidavit, and evidence to the canvassing board before making their determination. All challenged ballots must be determined no later than the time of canvassing for the particular primary or election. The decision of the canvassing board or other authority charged by law with canvassing the returns shall be final. Challenges of absentee ballots shall be determined according to RCW ((29.36.100)) 29.36.350 (as recodified by this act).

Sec. 255. RCW 29.10.130 and 1987 c 288 s 3 are each reenacted to read as follows:

CHALLENGE—AFFIDAVIT—ADMINISTRATION, NOTICE OF CHALLENGE. (1) Any registered voter may request that the registration of another voter be canceled if he or she believes that the voter does not meet the requirements of Article VI, section 1 of the state Constitution or that voter no longer maintains a legal voting residence at the address shown on his or her registration record. The challenger shall file with the county auditor a signed affidavit subject to the penalties of perjury, to the effect that to his or her personal knowledge and belief another registered voter does not actually reside at the address as given on his or her registration record or is otherwise not a qualified voter and that the voter in question is not protected by the provisions of Article VI, section 4, of the Constitution of the state of Washington. The person filing the challenge must furnish the address at which the challenged voter actually resides.

(2) Any such challenge of a voter's registration and right to vote made less than thirty days before a primary or election, special or general, shall be administered under RCW 29.10.127. The county auditor shall notify the challenged voter and the precinct election officers in the voter's precinct that a

challenge has been filed, provide the name of the challenger, and instruct both the precinct election officers and the voter that, in the event the challenged voter desires to vote at the ensuing primary or election, a challenged ballot will be provided. The voter shall also be informed that the status of his or her registration and the disposition of any challenged ballot will be determined by the county canvassing board in the manner provided by RCW 29.10.127. If the challenged voter does not vote at the ensuing primary or election, the challenge shall be processed in the same manner as challenges made more than thirty days prior to the primary or election under RCW 29.10.140.

Sec. 256. RCW 29.10.140 and 1987 c 288 s 4 are each reenacted to read as follows:

CHALLENGE—PROCEDURE BEFORE CANCELLATION. All challenges of voter registration under RCW 29.10.130 made thirty days or more before a primary or election, general or special, shall be delivered to the appropriate county auditor who shall notify the challenged voter, by certified mail, that his or her voter registration has been challenged.

The notification shall be mailed to the address at which the challenged voter is registered, any address provided by the challenger under RCW 29.10.130, and to any other address at which the individual whose registration is being challenged is alleged to reside or at which the county auditor would reasonably expect that individual to receive notice of the challenge of his or her voter registration. Included in the notification shall be a request that the challenged voter appear at a hearing to be held within ten days of the mailing of the request, at the place, day, and hour stated, in order to determine the validity of his or her registration. The challenger shall be provided with a copy of this notification and request. If either the challenger or the challenged voter is unable to appear in person, he or she may file a reply by means of an affidavit stating under oath the reasons he or she believes the registration to be invalid or valid.

If both the challenger and the challenged voter file affidavits instead of appearing in person, an evaluation of the affidavits by the county auditor constitutes a hearing for the purposes of this section.

The county auditor shall hold a hearing at which time both parties may present their facts and arguments. After reviewing the facts and arguments, including any evidence submitted by either side, the county auditor shall rule as to the validity or invalidity of the challenged registration. His or her ruling is final subject only to a petition for judicial review by the superior court under chapter 34.05 RCW. If either party, or both parties, fail to appear at the meeting or fail to file an affidavit, the county auditor shall determine the status of the registration based on his or her evaluation of the available facts.

Sec. 257. RCW 29.10.150 and 1991 c 81 s 27 are each amended to read as follows:

CHALLENGE OF REGISTRATION—FORMS, AVAILABILITY. The secretary of state as chief elections officer shall cause appropriate forms to be designed to carry out the provisions of RCW 29.10.130 (~~through 29.10.160~~) and 29.10.140 (as recodified by this act). The county auditors and (~~registrars~~) registration assistants shall have such forms available. Further, a reasonable supply of such forms shall be at each polling place on the day of a primary or election, general or special.

**PART 3
VOTING SYSTEMS**

Sec. 301. RCW 29.33.020 and 1990 c 59 s 17 are each reenacted to read as follows:

AUTHORITY FOR USE. At any primary or election in any county, votes may be cast, registered, recorded, or counted by means of voting systems that have been approved under RCW 29.33.041.

Sec. 302. RCW 29.33.041 and 1990 c 59 s 18 are each reenacted to read as follows:

INSPECTION AND TEST BY SECRETARY OF STATE—REPORT. The secretary of state shall inspect, evaluate, and publicly test all voting systems or components of voting systems that are submitted for review under RCW 29.33.051. The secretary of state shall determine whether the voting systems conform with all of the requirements of this title, the applicable rules adopted in accordance with this title, and with generally accepted safety requirements. The secretary of state shall transmit a copy of the report of any examination under this section, within thirty days after completing the examination, to the county auditor of each county.

Sec. 303. RCW 29.33.051 and 1990 c 59 s 19 are each reenacted to read as follows:

SUBMITTING SYSTEM OR COMPONENT FOR EXAMINATION. The manufacturer or distributor of a voting system or component of a voting system may submit that system or component to the secretary of state for examination under RCW 29.33.041.

Sec. 304. RCW 29.33.061 and 1990 c 59 s 20 are each reenacted to read as follows:

INDEPENDENT EVALUATION. (1) The secretary of state may rely on the results of independent design, engineering, and performance evaluations in the examination under RCW 29.33.041 if the source and scope of these independent evaluations are specified by rule.

(2) The secretary of state may contract with experts in mechanical or electrical engineering or data processing to assist in examining a voting system or component. The manufacturer or distributor who has submitted a voting system for testing under RCW 29.33.051 shall pay the secretary of state a deposit to reimburse the cost of any contract for consultation under this section and for any other unrecoverable costs associated with the examination of a voting system or component by the manufacturer or distributor who submitted the voting system or component for examination.

Sec. 305. RCW 29.33.081 and 1990 c 59 s 21 are each amended to read as follows:

APPROVAL REQUIRED—MODIFICATION. If voting systems or devices or vote tallying systems are to be used for conducting a primary or election, only those that have the approval of the secretary of state or had been approved under this chapter or the former chapter 29.34 RCW before March 22, 1982, may be used. Any modification, change, or improvement to any voting system or component of a system that does not impair its accuracy, efficiency, or

capacity or extend its function, may be made without reexamination or reapproval by the secretary of state under RCW 29.33.041.

Sec. 306. RCW 29.33.130 and 1990 c 59 s 22 are each reenacted to read as follows:

RESPONSIBILITY FOR MAINTENANCE AND OPERATION. The county auditor of a county in which voting systems are used is responsible for the preparation, maintenance, and operation of those systems and may employ and direct persons to perform some or all of these functions.

Sec. 307. RCW 29.33.145 and 1998 c 58 s 1 are each reenacted to read as follows:

ACCEPTANCE TEST. An agreement to purchase or lease a voting system or a component of a voting system is subject to that system or component passing an acceptance test sufficient to demonstrate that the equipment is the same as that certified by the secretary of state and that the equipment is operating correctly as delivered to the county.

Sec. 308. RCW 29.33.300 and 1990 c 59 s 26 are each reenacted to read as follows:

REQUIREMENTS OF VOTING DEVICES FOR APPROVAL. No voting device shall be approved by the secretary of state unless it:

- (1) Secures to the voter secrecy in the act of voting;
- (2) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (3) Permits the voter to vote for all the candidates of one party or in part for the candidates of one or more other parties;
- (4) Correctly registers all votes cast for any and all persons and for or against any and all measures;
- (5) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for president and vice president of the United States; and
- (6) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction.

Sec. 309. RCW 29.33.310 and 1990 c 59 s 27 are each reenacted to read as follows:

SINGLE DISTRICT AND PRECINCT ON VOTING DEVICES. The ballot on a single voting device shall not contain the names of candidates for the offices of United States representative, state senator, state representative, county council, or county commissioner in more than one district. In all general elections, primaries, and special elections, in each polling place the voting devices containing ballots for candidates from each congressional, legislative, or county council or commissioner district shall be grouped together and physically separated from those devices containing ballots for other districts. Each voter shall be directed by the precinct election officers to the correct group of voting devices.

Sec. 310. RCW 29.33.320 and 1990 c 59 s 28 are each reenacted to read as follows:

REQUIREMENTS OF VOTE TALLYING SYSTEMS FOR APPROVAL. The secretary of state shall not approve a vote tallying system unless it:

(1) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(2) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(3) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each issue of the ballot in that precinct;

(4) Accommodates rotation of candidates' names on the ballot under RCW 29.30.040;

(5) Produces precinct and cumulative totals in printed form; and

(6) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction.

Sec. 311. RCW 29.33.330 and 1990 c 59 s 25 are each amended to read as follows:

RECORD OF BALLOT FORMAT—DEVICES SEALED. In preparing a voting device for a primary or election, a record shall be made of the ballot format installed in each device and the precinct or portion of a precinct for which that device has been prepared. Except where provided by a rule adopted under RCW ((29.04.210)) 29.04.080 (as recodified by this act), after being prepared for a primary or election, each device shall be sealed with a uniquely numbered seal and provided to the inspector of the appropriate polling place.

Sec. 312. RCW 29.33.340 and 1990 c 59 s 29 are each reenacted to read as follows:

ELECTION OFFICIALS—INSTRUCTION, COMPENSATION, REQUIREMENTS. (1) Before each state primary or general election at which voting systems are to be used, the county auditor shall instruct all precinct election officers appointed under RCW 29.45.010, counting center personnel, and political party observers designated under RCW 29.54.025 in the proper conduct of their duties.

(2) The county auditor may waive instructional requirements for precinct election officers, counting center personnel, and political party observers who have previously received instruction and who have served for a sufficient length of time to be fully qualified to perform their duties. The county auditor shall keep a record of each person who has received instruction and is qualified to serve at the subsequent primary or election.

(3) As compensation for the time spent in receiving instruction, each precinct election officer who qualifies and serves at the subsequent primary or election shall receive an additional two hours compensation, to be paid at the same time and in the same manner as compensation is paid for services on the day of the primary or election.

(4) Except for the appointment of a precinct election officer to fill a vacancy under RCW 29.45.040, no inspector or judge may serve at any primary or election at which voting systems are used unless he or she has received the required instruction and is qualified to perform his or her duties in connection with the voting devices. No person may work in a counting center at a primary or election at which a vote tallying system is used unless that person has received the required instruction and is qualified to perform his or her duties in

connection with the handling and tallying of ballots for that primary or election. No person may serve as a political party observer unless that person has received the required instruction and is familiar with the operation of the counting center and the vote tallying system and the procedures to be employed to verify the accuracy of the programming for that vote tallying system.

Sec. 313. RCW 29.33.350 and 1998 c 58 s 2 are each amended to read as follows:

VOTE TALLYING SYSTEMS—PROGRAMMING TESTS. At least three days before each state primary or general election, the office of the secretary of state shall provide for the conduct of tests of the programming for each vote tallying system to be used at that primary or general election. The test must verify that the system will correctly count the vote cast for all candidates and on all measures appearing on the ballot at that primary or general election. ~~((The office of the secretary of state shall adopt rules specifying the manner of conducting these programming tests.))~~ The test shall verify the capability of the vote tallying system to perform all of the functions that can reasonably be expected to occur during conduct of that particular primary or election. If any error is detected, the cause shall be determined and corrected, and an errorless total shall be produced before the primary or election.

Such tests shall be observed by at least one representative from each major political party, if representatives have been appointed by the respective major political parties and are present at the test, and shall be open to candidates, the press, and the public. The county auditor and any political party observers shall certify that the test has been conducted in accordance with this section. Copies of this certification shall be retained by the secretary of state and the county auditor. All programming materials, test results, and test ballots shall be securely sealed until the day of the primary or general election.

Sec. 314. RCW 29.33.360 and 1998 c 58 s 3 are each reenacted to read as follows:

OPERATING PROCEDURES. The secretary of state may publish recommended procedures for the operation of the various vote tallying systems that have been approved. These procedures allow the office of the secretary of state to restrict or define the use of approved systems in elections.

Sec. 315. RCW 29.04.200 and 1998 c 245 s 26 are each amended to read as follows:

RECORDING REQUIREMENTS. (1) ~~((Beginning January 1, 1993,))~~ No voting device or machine may be used in a county with a population of seventy thousand or more to conduct a primary or general or special election in this state unless it correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election.

(2) ~~((Beginning January 1, 1993,))~~ The secretary of state shall not certify under this title any voting device or machine for use in conducting a primary or general or special election in this state unless the device or machine correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election.

~~((3) Beginning January 1, 1993, a county with a population of less than seventy thousand may use a voting machine or device for conducting a primary or general or special election which does not record on a separate ballot, available for audit purposes after the primary or election, the votes cast by each elector for any person and for or against any measure if:~~

~~(a) The device was certified under this title before January 1, 1993, for use in this state;~~

~~(b) The device otherwise satisfies the requirements of this title; and~~

~~(c) Not more than twenty percent of the votes cast during any primary or general or special election conducted after January 1, 1998, in the county are cast using such a machine or device.~~

~~(4) The purpose of subsection (3) of this section is to permit less populous counties to replace voting equipment in stages over several years. These less populous counties are, nonetheless, encouraged to secure as expeditiously as possible voting equipment which would satisfy the requirements of subsection (1) of this section established for more populous counties.))~~

PART 4 PRECINCT AND POLLING PLACE DETERMINATION AND ACCESSIBILITY

Sec. 401. RCW 29.57.010 and 1999 c 298 s 13 are each amended to read as follows:

INTENT—DUTIES OF COUNTY AUDITORS. The intent of this chapter is to require state and local election officials to designate and use polling places in all elections and permanent registration locations which are accessible to elderly and ~~((handicapped))~~ disabled persons. County auditors shall:

(1) Make modifications such as installation of temporary ramps or relocation of polling places within buildings, where appropriate;

(2) Designate new, accessible polling places to replace those that are inaccessible; and

(3) Continue to use polling places and voter registration locations which are accessible to elderly and ~~((handicapped))~~ disabled persons.

Sec. 402. RCW 29.57.090 and 1999 c 298 s 15 are each amended to read as follows:

ALTERNATIVE POLLING PLACES OR PROCEDURES. The secretary of state shall establish procedures to assure that, in any primary or election, any ~~((handicapped))~~ disabled or elderly voter assigned to an inaccessible polling place will, upon advance request of that voter, either be permitted to vote at an alternative accessible polling place not overly inconvenient to that voter or be provided with an alternative means of casting a ballot on the day of the primary or election. The county auditor shall make any accommodations in voting procedures necessary to allow the use of alternative polling places by elderly or ~~((handicapped))~~ disabled voters under this section.

Sec. 403. RCW 29.57.160 and 1999 c 298 s 20 are each amended to read as follows:

COSTS FOR MODIFICATIONS—ALTERNATIVES—ELECTION COSTS. (1) County auditors shall seek alternative polling places or other low-cost alternatives including, but not limited to, procedural changes and assistance

from local disabled groups, service organizations, and other private sources before incurring costs for modifications under this chapter.

(2) The cost of those modifications to buildings or other facilities, including signs designating ~~((handicapped))~~ disabled accessible parking and entrances, that are necessary to permit the use of those facilities for polling places under this chapter or any procedures established under RCW 29.57.090 shall be treated as election costs and prorated under RCW 29.13.045.

Sec. 404. RCW 29.04.040 and 1999 c 158 s 3 are each amended to read as follows:

PRECINCTS—NUMBER OF VOTERS—DIVIDING, ALTERING, OR COMBINING—CREATING NEW PRECINCTS. (1) ~~((No paper ballot precinct may contain more than three hundred active registered voters. The county legislative authority may divide, alter, or combine precincts so that, whenever practicable, over-populated precincts shall contain no more than two hundred fifty active registered voters in anticipation of future growth.~~

(2)) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection ~~((5))~~ (4) of this section, no precinct boundaries may be changed during the period starting on the thirtieth day prior to the first day for candidates to file for the primary election and ending with the day of the general election.

~~((3))~~ (2) Precincts in which voting machines or electronic voting devices are used may contain as many as nine hundred active registered voters. The number of poll-site ballot counting devices at each polling place is at the discretion of the auditor. The number of devices must be adequate to meet the expected voter turnout.

~~((4))~~ (3) On petition of twenty-five or more voters resident more than ten miles from any polling site, the county legislative authority shall establish a separate voting precinct therefor.

~~((5))~~ (4) The county auditor shall temporarily adjust precinct boundaries when a city or town annexes unincorporated territory to the city or town, or whenever unincorporated territory is incorporated as a city or town. The adjustment ~~((shall))~~ must be made as soon as possible after the approval of the annexation or incorporation. The temporary adjustment ~~((shall))~~ must be limited to the minimum changes necessary to accommodate the addition of the territory to the city or town, or to establish the eligible voters within the boundaries of the new city or town, and ~~((shall))~~ remains in effect only until precinct boundary modifications reflecting the annexation or incorporation are adopted by the county legislative authority.

The county legislative authority may establish by ordinance a limitation on the maximum number of active registered voters in each precinct within its jurisdiction. The limitation may be different for precincts based upon the method of voting used for such precincts and the number may be less than the number established by law, but in no case may the number exceed that authorized by law.

The county legislative authority of each county in the state hereafter formed shall, at their first session, divide their respective counties into election precincts ~~((with two hundred fifty active registered voters or less))~~ and establish the boundaries of the precincts. The county auditor shall thereupon designate the

voting place for each such precinct or whether the precinct is a vote by mail precinct.

~~((6))~~ (5) In determining the number of active registered voters for the purposes of this section, persons who are ongoing absentee voters under RCW ~~((29.36.013))~~ 29.36.240 (as recodified by this act) shall not be counted. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29.62.090.

Sec. 405. RCW 29.04.050 and 1999 c 298 s 1 are each amended to read as follows:

PRECINCTS—RESTRICTIONS ON PRECINCT BOUNDARIES—DESIGNATED BY NUMBER. (1) Every voting precinct must be wholly within a single congressional district, a single legislative district, ~~((and))~~ a single district of a county legislative authority, and, if applicable, a single city.

(2) Every voting precinct shall be composed, as nearly as practicable, of contiguous and compact areas.

(3) Except as provided in this subsection, changes to the boundaries of any precinct shall follow visible, physical features delineated on the most current maps provided by the United States census bureau. A change need not follow such visible, physical features if (a) it is necessitated by an annexation or incorporation and the proposed precinct boundary is identical to an exterior boundary of the annexed or incorporated area which does not follow a visible, physical feature; or (b) doing so would substantially impair election administration in the involved area.

(4) After a change to precinct boundaries is adopted by the county legislative authority, if the change does not follow visible physical features, the county auditor shall send to the secretary of state ~~((a))~~ an electronic or paper copy of the ((legal)) description ((and)), a map or maps of the changes, ~~and ((if all or part of the changes do not follow visible, physical features,))~~ a statement of the applicable exception under subsection (3) of this section. For boundary changes made pursuant to subsection (3)(b) of this section, the auditor shall include a statement of the reasons why following visible, physical features would have substantially impaired election administration.

(5) Every voting precinct within each county shall be designated by number for the purpose of preparation of maps and the tabulation of population for apportionment purposes. These precincts may be identified with names or other numbers for other election purposes.

(6) After a change to precinct boundaries in a city or town, the county auditor shall send one copy of the map or maps delineating the new precinct boundaries within that city or town to the city or town clerk.

(7) Precinct maps are public records and shall be available for inspection by the public during normal office hours in the offices where they are kept. Copies shall be made available to the public for a fee necessary to cover the cost of reproduction.

Sec. 406. RCW 29.04.055 and 2001 c 241 s 22 are each reenacted to read as follows:

COMBINING OR DIVIDING PRECINCTS, ELECTION BOARDS. At any special election or primary, the county auditor may combine, unite, or divide precincts and may combine or unite election boards for the purpose of holding

such election. At any general election, the county auditor may combine or unite election boards for the purpose of holding such election, but shall report all election returns by individual precinct.

Sec. 407. RCW 29.48.005 and 1965 c 9 s 29.48.005 are each amended to read as follows:

POLLING PLACE—MAY BE LOCATED OUTSIDE PRECINCT. Polling places for the various voting precincts may be located outside the boundaries of the respective precincts, when the officers conducting the primary or election shall deem it feasible(~~(= PROVIDED, That))~~). However, such polling places ((shall)) must be located within a reasonable distance of their respective precincts. The purpose of this section is to furnish adequate voting facilities at readily accessible and identifiable locations, and nothing ((herein shall be construed as affecting)) in this section affects the number, method of selection, or duties of precinct election officers.

Sec. 408. RCW 29.48.007 and 1985 c 205 s 14 are each reenacted to read as follows:

POLLING PLACE—USE OF COUNTY, MUNICIPALITY, OR SPECIAL DISTRICT FACILITIES. The legislative authority of each county, municipality, and special district shall, at the request of the county auditor, make their facilities available for use as polling places for primaries, special elections, and state general elections held within that county. When, in the judgment of the county auditor, a facility of a county, municipality, or special district would provide a location for a polling place that would best satisfy the requirements of chapter 29.57 RCW, he or she shall notify the legislative authority of that county, municipality, or district of the number of facilities needed for use as polling places. Payment for polling places and any other conditions or obligations regarding these polling places shall be provided for by contract between the county auditor and the county, municipality, or district.

Sec. 409. RCW 29.57.040 and 1979 ex.s. c 64 s 4 are each reenacted to read as follows:

PUBLIC BUILDINGS USED AS POLLING PLACES—CONDITIONS. Each state agency and entity of local government shall permit the use of any of its buildings and the most suitable locations therein as polling places when required by a county auditor to provide accessible places in each precinct.

Sec. 410. RCW 29.57.070 and 1999 c 298 s 14 are each reenacted to read as follows:

INACCESSIBLE POLLING PLACES—AUDITORS' LIST. No later than April 1st of each even-numbered year, each county auditor shall submit to the secretary of state a list showing the number of polling places in the county and specifying any that have been found inaccessible. The auditor shall indicate the reasons for inaccessibility, and what efforts have been made pursuant to this chapter to locate alternative polling places or to make the existing facilities temporarily accessible.

If a county auditor's list shows, for two consecutive reporting periods, that no polling places have been found inaccessible, the auditor need not submit further reports unless the secretary of state specifically reinstates the requirement for that county. Notice of reinstatement must be in writing and delivered at least sixty days before the reporting date.

Sec. 411. RCW 29.57.100 and 1999 c 298 s 16 are each reenacted to read as follows:

POLLING PLACES—ACCESSIBILITY REQUIRED, EXCEPTIONS. Each polling place must be accessible unless:

(1) The county auditor has determined that it is inaccessible, that no alternative accessible polling place is available, that no temporary modification of that polling place or any alternative polling place is possible, and that the county auditor has complied with the procedures established under RCW 29.57.090; or

(2) The secretary of state determines that a state of emergency exists that would otherwise interfere with the efficient administration of the primary or election.

Sec. 412. RCW 29.57.050 and 1979 ex.s. c 64 s 5 are each reenacted to read as follows:

REVIEW BY AND RECOMMENDATIONS OF DISABLED VOTERS. County auditors shall, as feasible, solicit and use the assistance of disabled voters in reviewing sites and recommending inexpensive remedies to improve accessibility.

Sec. 413. RCW 29.57.150 and 1999 c 298 s 19 are each reenacted to read as follows:

COUNTY AUDITORS—NOTICE OF ACCESSIBILITY. Each county auditor shall include a notice of the accessibility of polling places in the notice of election published under RCW 29.27.030 and 29.27.080.

PART 5 QUALIFICATIONS, TERMS, AND REQUIREMENTS FOR ELECTIVE OFFICES

Subpart 5.1 General

Sec. 501. RCW 29.27.090 and 1965 c 9 s 29.27.090 are each amended to read as follows:

PRESERVATION OF DECLARATION OF CANDIDACY. The secretary of state ~~(;)~~ and each county auditor ~~((of each county, and clerks of the several municipal corporations))~~ shall preserve all ~~((certificates of nomination))~~ declarations of candidacy filed in their respective offices for six months. All ~~((certificates shall))~~ declarations of candidacy must be open to public inspection ~~((under proper regulations made by the officer with whom they are filed)).~~

Sec. 502. RCW 29.15.025 and 1999 c 298 s 9 are each amended to read as follows:

QUALIFICATIONS FOR FILING, APPEARANCE ON BALLOT. (1) A person filing a declaration ~~((and affidavit))~~ of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except as provided in RCW 3.46.067 and 3.50.057, the candidate is, at the time the candidate's declaration (~~(and affidavit)~~) of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration (~~(and affidavit)~~) of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations (~~(and affidavits)~~) of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

~~((3))~~ (4) This section does not apply to the office of a member of the United States Congress.

Sec. 503. RCW 29.13.050 and 1979 ex.s. c 126 s 14 are each amended to read as follows:

LOCAL OFFICERS, BEGINNING OF TERMS—ORGANIZATION OF DISTRICT BOARDS OF DIRECTORS. The term of every city, town, and district officer elected to office on the first Tuesday following the first Monday in November of the odd-numbered years (~~(shall)~~) begins in accordance with RCW 29.04.170 (~~(= PROVIDED, That any)~~). However, a person elected to less than a full term shall assume office as soon as the election returns have been certified and he or she is qualified in accordance with RCW 29.01.135.

Each board of directors of every district shall be organized at the first meeting held after one or more newly elected directors take office.

Sec. 504. RCW 29.04.170 and 1999 c 298 s 3 are each amended to read as follows:

LOCAL ELECTED OFFICIALS, COMMENCEMENT OF TERM OF OFFICE—PURPOSE, 1979 EX.S. C 126. (1) The legislature finds that certain laws are in conflict governing the (~~(election)~~) assumption of office of various local officials. The purpose of (~~(chapter 126, Laws of 1979 ex. sess.)~~) this section is to provide a common date for the assumption of office for all the elected officials of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting. A person elected to the office of school director begins his or her term of office at the first official meeting of the board of directors after certification of the election results. It is also the purpose of (~~(chapter 126, Laws of 1979 ex. sess.)~~) this section to remove these conflicts and delete old statutory language concerning such elections which is no longer necessary.

(2) For elective offices of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting, the term of incumbents (~~(shall)~~) ends and the term of successors (~~(shall)~~) begins after the successor is elected and qualified, and the term (~~(shall)~~) commences immediately after December 31st following the election, except as follows:

(a) Where the term of office varies from this standard according to statute; and

(b) If the election results have not been certified prior to January 1st after the election, in which event the time of commencement for the new term (~~shall~~) occurs when the successor becomes qualified in accordance with RCW 29.01.135.

(3) For elective offices governed by this section, the oath of office (~~shall~~) must be taken as the last step of qualification as defined in RCW 29.01.135 but may be taken either:

(a) Up to ten days prior to the scheduled date of assuming office; or

(b) At the last regular meeting of the governing body of the applicable county, city, town, or special district held before the winner is to assume office.

Subpart 5.2

Minor Party and Independent Candidate Nomiuating

Sec. 505. RCW 29.24.010 and 1977 ex.s. c 329 s 1 are each amended to read as follows:

DEFINITIONS—"CONVENTION" AND "ELECTION JURISDICTION."

A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of Congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a statewide basis.

Sec. 506. RCW 29.24.020 and 2001 c 30 s 2 are each reenacted to read as follows:

NOMINATION BY CONVENTION OR WRITE-IN—DATES—SPECIAL FILING PERIOD. (1) Any nomination of a candidate for partisan public office by other than a major political party may be made only: (a) In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29.68.080; (b) as provided by RCW 29.62.180; or (c) as otherwise provided in this section.

(2) Nominations of candidates for president and vice president of the United States other than by a major political party may be made either at a convention conducted under subsection (1) of this section, or at a similar convention taking place not earlier than the first Sunday in July and not later than seventy days before the general election. Conventions held during this time period may not nominate candidates for any public office other than president and vice president of the United States, except as provided in subsection (3) of this section.

(3) If a special filing period for a partisan office is opened under RCW 29.15.230, candidates of minor political parties and independent candidates may file for office during that special filing period. The names of those candidates may not appear on the ballot unless they are nominated by convention held no later than five days after the close of the special filing period and a certificate of

nomination is filed with the filing officer no later than three days after the convention. The requirements of RCW 29.24.025 do not apply to such a convention. If primary ballots or a voters' pamphlet are ordered to be printed before the deadline for submitting the certificate of nomination and the certificate has not been filed, then the candidate's name will be included but may not appear on the general election ballot unless the certificate is timely filed and the candidate otherwise qualifies to appear on that ballot.

(4) A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice president, United States senator, or a statewide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29.24.030. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention.

Sec. 507. RCW 29.24.025 and 1989 c 215 s 1 are each reenacted to read as follows:

NOTICE OF CONVENTION. Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention.

Sec. 508. RCW 29.24.030 and 1989 c 215 s 3 are each reenacted to read as follows:

REQUIREMENTS FOR VALIDITY OF CONVENTION. (1) To be valid, a convention must be attended by at least twenty-five registered voters.

(2) In order to nominate candidates for the offices of president and vice president of the United States, United States senator, or any statewide office, a nominating convention shall obtain and submit to the filing officer the signatures of at least two hundred registered voters of the state of Washington. In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of twenty-five persons who are registered to vote in the jurisdiction of the office for which the nominations are made.

Sec. 509. RCW 29.24.035 and 2001 c 64 s 1 are each reenacted to read as follows:

NOMINATING PETITION—REQUIREMENTS. A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by RCW 29.24.040(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for a primary or election.

Sec. 510. RCW 29.24.040 and 1989 c 215 s 4 are each amended to read as follows:

CERTIFICATE OF NOMINATION—REQUISITES. A certificate evidencing nominations made at a convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his or her residence, and the office for which he or she is named, and if the nomination is for the offices of president and vice president of the United States, a sworn statement from both nominees giving their consent to the nomination;
- (3) Identify the minor political party or the independent candidate on whose behalf the convention was held;
- (4) Be verified by the oath of the presiding officer and secretary;
- (5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of registered voters equal in number to that required by RCW 29.24.030;
- (6) Contain proof of publication of the notice of calling the convention; and
- (7) Be submitted to the appropriate filing officer not later than one week following the adjournment of the convention at which the nominations were made. If the nominations are made only for offices whose jurisdiction is entirely within one county, the certificate and nominating petitions must be filed with the county auditor. If a minor party or independent candidate convention nominates any candidates for offices whose jurisdiction encompasses more than one county, all nominating petitions and the convention certificates must be filed with the secretary of state.

Sec. 511. RCW 29.24.045 and 2001 c 30 s 4 are each reenacted to read as follows:

MULTIPLE CERTIFICATES OF NOMINATION. (1) If two or more valid certificates of nomination are filed purporting to nominate different candidates for the same position using the same party name, the filing officer must give effect to both certificates. If conflicting claims to the party name are not resolved either by mutual agreement or by a judicial determination of the right to the name, the candidates must be treated as independent candidates. Disputes over the right to the name must not be permitted to delay the printing of either ballots or a voters' pamphlet. Other candidates nominated by the same conventions may continue to use the partisan affiliation unless a court of competent jurisdiction directs otherwise.

(2) A person affected may petition the superior court of the county in which the filing officer is located for a judicial determination of the right to the name of a minor political party, either before or after documents are filed with the filing officer. The court shall resolve the conflict between competing claims to the use of the same party name according to the following principles: (a) The prior established public use of the name during previous elections by a party composed of or led by the same individuals or individuals in documented succession; (b) prior established public use of the name earlier in the same election cycle; (c) the nomination of a more complete slate of candidates for a number of offices or in a number of different regions of the state; (d) documented affiliation with a national or statewide party organization with an established use of the name; (e) the first date of filing of a certificate of nomination; and (f) such other indicia of an established right to use of the name

as the court may deem relevant. If more than one filing officer is involved, and one of them is the secretary of state, the petition must be filed in the superior court for Thurston county. Upon resolving the conflict between competing claims, the court may also address any ballot designation for the candidate who does not prevail.

Sec. 512. RCW 29.24.055 and 1989 c 215 s 6 are each reenacted to read as follows:

PRESIDENTIAL ELECTORS—SELECTION AT CONVENTION. A minor political party or independent candidate convention nominating candidates for the offices of president and vice president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the presiding officer of the convention.

Sec. 513. RCW 29.24.060 and 1989 c 215 s 7 are each reenacted to read as follows:

CERTIFICATE OF NOMINATION—CHECKING SIGNATURES—APPEAL OF DETERMINATION. Upon the receipt of the certificate of nomination, the officer with whom it is filed shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of RCW 29.24.030 have been met. Once the determination has been made, the filing officer shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the filing officer's determination must be filed with the superior court of the county in which the certificate or petitions were filed not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying.

Sec. 514. RCW 29.24.070 and 1990 c 59 s 103 are each amended to read as follows:

DECLARATIONS OF CANDIDACY REQUIRED, EXCEPTIONS—PAYMENT OF FEES. Not later than the Friday immediately preceding the first day for candidates to file, the secretary of state shall notify the county auditors of the names and designations of all minor party and independent candidates who have filed valid convention certificates and nominating petitions with that office. Except for the offices of president and vice president, persons nominated under this chapter shall file declarations of candidacy as provided by RCW 29.15.010 and 29.15.030. The name of a candidate nominated at a convention shall not be printed upon the primary ballot unless he or she pays the fee required by law to be paid by candidates for the same office to be nominated at a primary.

**PART 6
FILING FOR OFFICE**

**Suhpart 6.1
General**

Sec. 601. RCW 29.15.130 and 1990 c 59 s 79 are each reenacted to read as follows:

POSITION NUMBERS DESIGNATED, WHEN—EFFECT. Not less than thirty days before the first day for filing declarations of candidacy under RCW 29.15.020 for legislative, judicial, county, city, town, or district office, where more than one position with the same name, district number, or title will be voted upon at the succeeding election, the filing officer shall designate the positions to be filled by number.

The positions so designated shall be dealt with as separate offices for all election purposes. With the exception of the office of justice of the supreme court, the position numbers shall be assigned, whenever possible, to reflect the position numbers that were used to designate the same positions at the last full-term election for those offices.

Sec. 602. RCW 29.15.140 and 1990 c 59 s 92 are each reenacted to read as follows:

DESIGNATION OF SHORT TERMS, FULL TERMS, AND UNEXPIRED TERMS—FILING DECLARATIONS—ELECTION TO BOTH SHORT AND FULL TERMS. If at the same election there are short terms or full terms and unexpired terms of office to be filled, the filing officer shall distinguish them and designate the short term, the full term, and the unexpired term, as such, or by use of the words "short term," "unexpired two year term," or "four year term," as the case may be.

In filing the declaration of candidacy in such cases the candidate shall specify that the candidacy is for the short term, the full term, or the unexpired term. When both a short term and a full term for the same position are scheduled to be voted upon, or when a short term is created after the close of the filing period, a single declaration of candidacy accompanied by a single filing fee shall be construed as a filing for both the short term and the full term and the name of such candidate shall appear upon the ballot for the position sought with the designation "short term and full term." The candidate elected to both such terms shall be sworn into and assume office for the short term as soon as the election returns have been certified and shall again be sworn into office on the second Monday in January following the election to assume office for the full term.

Sec. 603. RCW 29.15.010 and 2002 c 140 s 1 are each amended to read as follows:

DECLARATION OF CANDIDACY. A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration ((and affidavit)) of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to indicate a party designation, if applicable;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under RCW 29.15.050;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29.15.050.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process.

Sec. 604. RCW 29.15.044 and 2002 c 140 s 2 are each reenacted to read as follows:

ELECTRONIC FILING—AUTHORIZED—PERIOD. A candidate may file his or her declaration of candidacy for an office by electronic means on a system specifically designed and authorized by a filing officer to accept filings.

(1) Filings that are received electronically must capture all information specified in RCW 29.15.010 (1) through (4).

(2) Electronic filing may begin at 9:00 a.m. the fourth Monday in July and continue through 4:00 p.m. the following Friday.

(3) In case of special filing periods established in this chapter, electronic filings may be accepted beginning at 9:00 a.m. on the first day of the special filing period through 4:00 p.m. the last day of the special filing period.

Sec. 605. RCW 29.15.020 and 1990 c 59 s 81 are each reenacted to read as follows:

DECLARATION OF CANDIDACY—CERTAIN OFFICES, WHEN FILED. Except where otherwise provided by this title, declarations of candidacy for the following offices shall be filed during regular business hours with the filing officer no earlier than the fourth Monday in July and no later than the following Friday in the year in which the office is scheduled to be voted upon:

(1) Offices that are scheduled to be voted upon for full terms or both full terms and short terms at, or in conjunction with, a state general election; and

(2) Offices where a vacancy, other than a short term, exists that has not been filled by election and for which an election to fill the vacancy is required in conjunction with the next state general election.

This section supersedes all other statutes that provide for a different filing period for these offices.

Sec. 606. RCW 29.15.090 and 1990 c 59 s 83 are each amended to read as follows:

CANDIDATES' NAMES—NICKNAMES. When filing for office, a candidate may indicate the manner in which he or she desires his or her name to be printed on the ballot. For filing purposes, a candidate may use a nickname by which he or she is commonly known as his or her first name, but the last name shall be the name under which he or she is registered to vote.

No candidate may:

(1) Use a nickname that denotes present or past occupation, including military rank;

(2) Use a nickname that denotes the candidate's position on issues or political affiliation;

(3) Use a nickname designed intentionally to mislead voters.

~~((The secretary of state shall adopt rules to resolve those instances when candidates have filed for the same office whose last names are so similar in sound or spelling as to be confusing to the voter.))~~

Sec. 607. RCW 29.15.030 and 2002 c 140 s 4 are each amended to read as follows:

DECLARATION OF CANDIDACY—WHERE FILED—COPY TO PUBLIC DISCLOSURE COMMISSION. Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when voters from a district comprising more than one county vote upon the candidates;

(3) The county auditor for all other offices. For any nonpartisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the state board of education as the county to which the joint school district is considered as belonging under RCW 28A.323.040.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall transmit to the public disclosure commission the information required in RCW 29.15.010 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his or her office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his or her receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission.

Sec. 608. RCW 29.15.040 and 1987 c 110 s 2 are each reenacted to read as follows:

DECLARATION—FILING BY MAIL. Any candidate may mail his or her declaration of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be processed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on the last day of the filing period shall be included with filings made in person during the filing period. In partisan and judicial elections the filing officer shall determine by lot the order in which the names of those candidates shall appear upon sample and absentee primary ballots.

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candidates to file for office shall be rejected and returned to the candidate attempting to file it.

Sec. 609. RCW 29.15.050 and 1999 c 298 s 10 are each reenacted to read as follows:

DECLARATION—FEES AND PETITIONS. A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a nominating petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury.

Sec. 610. RCW 29.15.060 and 1984 c 142 s 5 are each amended to read as follows:

NOMINATING PETITION—CONTENTS. The nominating petition authorized by RCW 29.15.050 shall be printed on sheets of uniform color and size, shall contain no more than twenty numbered lines, and ~~((shall))~~ must be in substantially the following form:

((WARNING

~~Any person who signs this petition with any other than his or her true name, or who knowingly (1) signs more than one petition for any single candidate, (2) signs the petition when he or she is not a legal voter, or (3) makes any false statement may be subject to fine, or imprisonment, or both.))~~ The warning prescribed by RCW 29.79.115; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made), hereby petition that the name of (candidate's name) be printed on the official primary ballot for the office of (insert name of office).

<u>((Signature</u>	<u>Printed Name</u>	<u>Residence Address</u>	<u>City</u>	<u>County</u>
1 -----	-----	-----	---	-----
2 -----	-----	-----	---	-----
3 -----	-----	-----	---	-----
ete:))				

The petition must include a place for each individual to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Sec. 611. RCW 29.15.070 and 1984 c 142 s 6 are each reenacted to read as follows:

PETITIONS—REJECTION—ACCEPTANCE, CANVASS OF SIGNATURES—JUDICIAL REVIEW. Nominating petitions may be rejected for the following reasons:

- (1) The petition is not in the proper form;
- (2) The petition clearly bears insufficient signatures;
- (3) The petition is not accompanied by a declaration of candidacy;
- (4) The time within which the petition and the declaration of candidacy could have been filed has expired.

If the petition is accepted, the officer with whom it is filed shall canvass the signatures contained on it and shall reject the signatures of those persons who are not registered voters and the signatures of those persons who are not registered to vote within the jurisdiction of the office for which the nominating petition is filed. He or she shall additionally reject any signature that appears on the nominating petitions of two or more candidates for the same office and shall also reject, each time it appears, the name of any person who signs the same petition more than once.

If the officer with whom the petition is filed refuses to accept the petition or refuses to certify the petition as bearing sufficient valid signatures, the person filing the petition may appeal that action to the superior court. The application for judicial review shall take precedence over other cases and matters and shall be speedily heard and determined.

Sec. 612. RCW 29.15.125 and 1994 c 223 s 7 are each reenacted to read as follows:

NOTICE OF DATE FOR WITHDRAWAL. Each person who files a declaration of candidacy for an elected office of a city, town, or special district shall be given written notice of the date by which a candidate may withdraw his or her candidacy under RCW 29.15.120.

Sec. 613. RCW 29.15.120 and 1994 c 223 s 6 are each reenacted to read as follows:

WITHDRAWAL OF CANDIDACY. A candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29.15.020 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods held under this title. The filing officer may permit the withdrawal of a filing for the office of precinct committee officer at the request of the candidate at any time if no absentee ballots have been issued for that office and the general election ballots for that precinct have not been printed. The filing officer may permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary ballots for that city, town, or special district have not been ordered. No filing fee may be refunded to any candidate who withdraws under this section. Notice of the deadline for withdrawal of candidacy and that the filing fee is not refundable shall be given to each candidate at the time he or she files.

Sec. 614. RCW 29.15.160 and 1975-76 2nd ex.s. c 120 s 9 are each reenacted to read as follows:

VOID IN CANDIDACY—EXCEPTION. A void in candidacy for a nonpartisan office occurs when an election for such office, except for the short term, has been scheduled and no valid declaration of candidacy has been filed for the position or all persons filing such valid declarations of candidacy have died or been disqualified.

Sec. 615. RCW 29.15.210 and 1972 ex.s. c 61 s 5 are each reenacted to read as follows:

NOTICE OF VOID IN CANDIDACY. The election officer with whom declarations of candidacy are filed shall give notice of a void in candidacy for a nonpartisan office, by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law. The notice shall state the office, and the time and place for filing declarations of candidacy.

Sec. 616. RCW 29.15.220 and 1972 ex.s. c 61 s 6 are each amended to read as follows:

FILINGS TO FILL VOID IN CANDIDACY—HOW MADE. Filings to fill a void in candidacy for nonpartisan office (~~(shall)~~ must be made in the same manner and with the same official as required during the regular filing period for such office(~~(—PROVIDED))~~, except that nominating signature petitions (~~(which)~~ that may be required of candidates filing for certain district offices during the normal filing period (~~(shall)~~ may not be required of candidates filing during the special three-day filing period.

Sec. 617. RCW 29.15.170 and 2001 c 46 s 1 are each reenacted to read as follows:

REOPENING OF FILING—OCCURRENCES BEFORE SIXTH TUESDAY BEFORE PRIMARY. Filings for a nonpartisan office shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law whenever before the sixth Tuesday prior to a primary:

- (1) A void in candidacy occurs;
- (2) A vacancy occurs in any nonpartisan office leaving an unexpired term to be filled by an election for which filings have not been held; or
- (3) A nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified.

Candidacies validly filed within said three-day period shall appear on the ballot as if made during the earlier filing period.

Sec. 618. RCW 29.15.180 and 2001 c 46 s 2 are each reenacted to read as follows:

REOPENING OF FILING—OCCURRENCES AFTER SIXTH TUESDAY BEFORE PRIMARY. Filings for a nonpartisan office (other than judge of the supreme court or superintendent of public instruction) shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law, when:

- (1) A void in candidacy for such nonpartisan office occurs on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election; or
- (2) A nominee for judge of the superior court eligible after a contested primary for a certificate of election by Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified within the ten day period immediately following the last day allotted for a candidate to withdraw; or
- (3) A vacancy occurs in any nonpartisan office on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election leaving an unexpired term to be filled by an election for which filings have not been held.

The candidate receiving a plurality of the votes cast for that office in the general election shall be deemed elected.

Sec. 619. RCW 29.15.190 and 2002 c 108 s 1 are each amended to read as follows:

SCHEDULED ELECTION LAPSES, WHEN. A scheduled election shall be lapsed, the office deemed stricken from the ballot, no purported write-in votes counted, and no candidate certified as elected, when:

- (1) In an election for judge of the supreme court or superintendent of public instruction, a void in candidacy occurs on or after the sixth Tuesday prior to a primary, public filings and the primary being an indispensable phase of the election process for such offices;
- (2) Except as otherwise specified in RCW 29.15.180, (~~as now or hereafter amended,~~) a nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state

Constitution dies or is disqualified on or after the sixth Tuesday prior to a primary;

(3) In other elections for nonpartisan office a void in candidacy occurs or a vacancy occurs involving an unexpired term to be filled on or after the sixth Tuesday prior to an election.

Sec. 620. RCW 29.15.200 and 1994 c 223 s 8 are each reenacted to read as follows:

LAPSE OF ELECTION WHEN NO FILING FOR SINGLE POSITIONS—EFFECT. If after both the normal filing period and special three day filing period as provided by RCW 29.15.170 and 29.15.180 have passed, no candidate has filed for any single city, town, or district position to be filled, the election for such position shall be deemed lapsed, the office deemed stricken from the ballot and no write-in votes counted. In such instance, the incumbent occupying such position shall remain in office and continue to serve until a successor is elected at the next election when such positions are voted upon.

Sec. 621. RCW 29.15.230 and 2001 c 46 s 3 are each reenacted to read as follows:

VACANCY IN PARTISAN ELECTIVE OFFICE—SPECIAL FILING PERIOD. Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the sixth Tuesday prior to a primary, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any such special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by such other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary ballot as if filed during the regular filing period.

Subpart 6.2 Write-in Candidates

Sec. 622. RCW 29.04.180 and 1999 c 157 s 1 are each amended to read as follows:

WRITE-IN VOTING—CANDIDATES, DECLARATION. Any person who desires to be a write-in candidate and have such votes counted at a primary or election may (~~(, if the jurisdiction of the office sought is entirely within one county,)~~) file a declaration of candidacy with the (~~(county auditor)~~) officer designated in RCW 29.15.030 not later than the day before the primary or election. (~~(If the jurisdiction of the office sought encompasses more than one county the declaration of candidacy shall be filed with the secretary of state not later than the day before the primary or election.)~~) Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same manner as required of other candidates filing for the office as provided in RCW 29.15.050.

Votes cast for write-in candidates who have filed such declarations of candidacy and write-in votes for persons appointed by political parties pursuant to RCW 29.18.160 need only specify the name of the candidate in the

appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number or political party, if ~~((applicable))~~ the manner in which the write-in is done does not make the office or position clear. In order for write-in votes to be valid in jurisdictions employing optical-scan mark sense ballot systems the voter must complete the proper mark next to the write-in line for that office.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or the other of the two filings is for the office of precinct committee person;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committee person.

The declaration of candidacy shall be similar to that required by RCW 29.15.010. No write-in candidate filing under RCW 29.04.180 may be included in any voter's pamphlet produced under chapter ~~((29.80))~~ 29.81 RCW ~~(as recodified by this act)~~ unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29.81A RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets.

Sec. 623. RCW 29.04.190 and 1988 c 181 s 2 are each reenacted to read as follows:

WRITE-IN CANDIDATES—NOTICE TO AUDITORS, BALLOT COUNTERS. The secretary of state shall notify each county auditor of any declarations filed with the secretary under RCW 29.04.180 for offices appearing on the ballot in that county. The county auditor shall ensure that those persons charged with counting the ballots for a primary or election are notified of all valid write-in candidates before the tabulation of those ballots.

PART 7 VACANCIES

Sec. 701. RCW 29.18.150 and 1990 c 59 s 102 are each amended to read as follows:

ON MAJOR PARTY TICKET CAUSED BY NO FILING—HOW FILLED. ~~((Should))~~ If a place on the ticket of a major political party ~~((be))~~ is vacant because no person has filed for nomination as the candidate of that major political party, after the last day allowed for candidates to withdraw as provided by RCW 29.15.120, and if the vacancy is for a state or county office to be voted on solely by the electors of a single county, the county central committee of the major political party may select and certify a candidate to fill the vacancy~~((;))~~. If the vacancy is for any other office the state central committee of the major political party may select and certify a candidate to fill the vacancy~~((;))~~. The certificate must set forth the cause of the vacancy, the name of the person

nominated, the office for which ~~((he))~~ the person is nominated, and other pertinent information required in an ordinary certificate of nomination and be filed in the proper office no later than the first Friday after the last day allowed for candidates to withdraw, together with the candidate's fee applicable to that office and a declaration of candidacy.

Sec. 702. RCW 29.18.160 and 2001 c 46 s 4 are each amended to read as follows:

BY DEATH OR DISQUALIFICATION—HOW FILLED—CORRECTING BALLOTS—COUNTING VOTES ALREADY CAST. A vacancy caused by the death or disqualification of any candidate or nominee of a major or minor political party may be filled at any time up to and including the day prior to the election for that position. For state partisan offices in any political subdivision voted on solely by electors of a single county, an individual shall be appointed to fill such vacancy by the county central committee in the case of a major political party or by the state central committee or comparable governing body in the case of a minor political party. For other partisan offices, including federal or statewide offices, an individual shall be appointed to fill such vacancy by the state central committee or comparable governing body of the appropriate political party.

~~((Should such))~~ **If** the vacancy occurs no later than the sixth Tuesday prior to the state primary or general election concerned and the ballots have been printed, it shall be mandatory that they be corrected by the appropriate election officers. In making such correction, it shall not be necessary to reprint complete ballots if any other less expensive technique can be used and the resulting correction is reasonably clear.

~~((Should such))~~ **If** the vacancy occurs after the sixth Tuesday prior to ~~((said))~~ the state primary or general election and time does not exist in which to correct ballots (including absentee ballots), either in total or in part, then the votes cast or recorded for the person who has died or become disqualified shall be counted for the person who has been named to fill such vacancy.

When the secretary of state is the person with whom the appointment by the major or minor political party is filed, ~~((he))~~ the secretary shall, in certifying candidates or nominations to the various county officers insert the name of the person appointed to fill a vacancy.

~~((In the event that))~~ **If** the secretary of state has already sent forth ~~((his))~~ the certificate when the appointment to fill a vacancy is filed ~~((with him))~~, ~~((he))~~ the secretary shall forthwith certify to the county auditors of the proper counties the name and place of residence of the person appointed to fill a vacancy, the office for which ~~((he))~~ the person is a candidate or nominee, the party ~~((he))~~ the person represents, and all other pertinent facts pertaining to the vacancy.

Sec. 703. RCW 29.68.070 and 1985 c 45 s 3 are each reenacted to read as follows:

UNITED STATES SENATE—TEMPORARY APPOINTMENT. When a vacancy occurs in the representation of this state in the senate of the United States, the governor shall make a temporary appointment to that office until the people fill the vacancy by election as provided in this chapter.

Sec. 704. RCW 29.68.080 and 1990 c 59 s 105 are each amended to read as follows:

CONGRESS—SPECIAL ELECTION. (1) Whenever a vacancy occurs in the ~~((office of))~~ United States house of representatives or the United States ~~((senator))~~ senate from this state ~~((or any congressional district of this state))~~, the governor shall order a special election to fill the vacancy.

(2) Within ten days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than ninety days after the issuance of the writ, fixing a date for the primary for nominating candidates for the special vacancy election not less than thirty days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy is in the office of United States representative, the writ of election shall specify the congressional district that is vacant.

(3) If the vacancy occurs less than six months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary and special vacancy elections shall be held in concert with the state primary and state general election in that year.

(4) If the vacancy occurs on or after the first day for filing under RCW 29.15.020 and on or before the second Friday following the close of the filing period, a special filing period of three normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which candidates are to be nominated. The names of candidates who have filed valid declarations of candidacy during this three-day period shall appear on the approaching primary ballot.

(5) If the vacancy occurs later than the second Friday following the close of the filing period, a special primary and special vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the ninetieth day following the November election.

~~((6) As used in this chapter, "county" means, in the case of a vacancy in the office of United States senator, any or all of the counties in the state and, in the case of a vacancy in the office of United States representative, only those counties wholly or partly within the congressional district in which the vacancy has occurred.))~~

Sec. 705. RCW 29.68.100 and 1985 c 45 s 5 are each amended to read as follows:

CONGRESS—NOTICES OF SPECIAL PRIMARY AND SPECIAL ELECTION. After calling a special primary and special vacancy election to fill a vacancy in the ~~((office of))~~ United States house of representatives or the United States ~~((senator))~~ senate from this state, the governor shall immediately notify the secretary of state who shall, in turn, immediately notify the county auditor of each county wholly or partly within which the vacancy exists.

Each county auditor shall publish notices of the special primary and the special vacancy election at least once in any legal newspaper published in the county, as provided by RCW 29.27.030 and 29.27.080 respectively.

Sec. 706. RCW 29.68.130 and 1985 c 45 s 7 are each amended to read as follows:

CONGRESS—GENERAL, PRIMARY ELECTION LAWS TO APPLY—TIME DEADLINES, MODIFICATIONS. The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in RCW 29.68.080 through ((29.68.120)) 29.68.100 (as recodified by this act) to the extent that they are not inconsistent with the provisions of these sections. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29.04.080.

NEW SECTION. Sec. 707. PRECINCT COMMITTEE OFFICER. If a vacancy occurs in the office of precinct committee officer by reason of death, resignation, or disqualification of the incumbent, or because of failure to elect, the respective county chair of the county central committee shall fill the vacancy by appointment. However, in a legislative district having a majority of its precincts in a county with a population of one million or more, the appointment may be made only upon the recommendation of the legislative district chair. The person so appointed must have the same qualifications as candidates when filing for election to the office for that precinct. When a vacancy in the office of precinct committee officer exists because of failure to elect at a state general election, the vacancy may not be filled until after the organization meeting of the county central committee and the new county chair has been selected as provided by RCW 29.42.030.

PART 8 VOTERS' PAMPHLETS

Subpart 8.1 State Voters' Pamphlet

Sec. 801. RCW 29.81.210 and 1999 c 260 s 1 are each reenacted to read as follows:

PRINTING AND DISTRIBUTION. The secretary of state shall, whenever at least one statewide measure or office is scheduled to appear on the general election ballot, print and distribute a voters' pamphlet.

The secretary of state shall distribute the voters' pamphlet to each household in the state, to public libraries, and to any other locations he or she deems appropriate. The secretary of state shall also produce taped or Braille transcripts of the voters' pamphlet, publicize their availability, and mail without charge a copy to any person who requests one.

The secretary of state may make the material required to be distributed by this chapter available to the public in electronic form. The secretary of state may provide the material in electronic form to computer bulletin boards, print and broadcast news media, community computer networks, and similar services at the cost of reproduction or transmission of the data.

Sec. 802. RCW 29.04.035 and 1984 c 41 s 1 are each amended to read as follows:

PROHIBITION AGAINST CAMPAIGN MATERIALS DECEPTIVELY SIMILAR TO VOTERS' PAMPHLET. No person or entity may publish or

distribute any campaign material that is deceptively similar in design or appearance to a voters' pamphlet ~~((or candidates' pamphlet or combination thereof, which pamphlet or combination))~~ that was published by the secretary of state during the ten-year period ~~((prior to))~~ before the publication or distribution of the campaign material by the person or entity. The secretary of state shall take reasonable measures to prevent or to stop violations of this section. Such measures may include, among others, petitioning the superior court for a temporary restraining order or other appropriate injunctive relief. In addition, the secretary may request the superior court to impose a civil fine on a violator of this section. The court is authorized to levy on and recover from each violator a civil fine not to exceed the greater of: (1) Two dollars for each copy of the deceptive material distributed, or (2) one thousand dollars. In addition, the violator ~~((shall be))~~ is liable for the state's legal expenses and other costs resulting from the violation. Any funds recovered under this section ~~((shall))~~ must be transmitted to the state treasurer for deposit in the general fund.

Sec. 803. RCW 29.81.220 and 1999 c 260 s 2 are each reenacted to read as follows:

CONTENTS. The voters' pamphlet must contain:

(1) Information about each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29.81.250;

(2) In even-numbered years, statements, if submitted, advocating the candidacies of nominees for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit a campaign mailing address and telephone number and a photograph not more than five years old and of a size and quality that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) In even-numbered years, a section explaining how voters may participate in the election campaign process; the address and telephone number of the public disclosure commission established under RCW 42.17.350; and a summary of the disclosure requirements that apply when contributions are made to candidates and political committees;

(5) In even-numbered years the name, address, and telephone number of each political party with nominees listed in the pamphlet, if filed with the secretary of state by the state committee of a major political party or the presiding officer of the convention of a minor political party;

(6) In each odd-numbered year immediately before a year in which a president of the United States is to be nominated and elected, information explaining the precinct caucus and convention process used by each major political party to elect delegates to its national presidential candidate nominating convention. The pamphlet must also provide a description of the statutory

procedures by which minor political parties are formed and the statutory methods used by the parties to nominate candidates for president;

(7) In even-numbered years, a description of the office of precinct committee officer and its duties;

(8) An application form for an absentee ballot;

(9) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29.81.260;

(10) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters.

Sec. 804. RCW 29.81.230 and 1999 c 260 s 3 are each reenacted to read as follows:

EXPLANATORY STATEMENTS. (1) Explanatory statements prepared by the attorney general under RCW 29.81.250 (3) and (4) must be written in clear and concise language, avoiding legal and technical terms when possible, and filed with the secretary of state.

(2) When the explanatory statement for a measure initiated by petition is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the person proposing the measure and any others who have made written request for notification of the exact language of the explanatory statement. When the explanatory statement for a measure referred to the ballot by the legislature is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the presiding officer of the senate and the presiding officer of the house of representatives and any others who have made written request for notification of the exact language of the explanatory statement.

(3) A person dissatisfied with the explanatory statement may appeal to the superior court of Thurston County within five days of the filing date. A copy of the petition and a notice of the appeal must be served on the secretary of state and the attorney general. The court shall examine the measure, the explanatory statement, and objections, and may hear arguments. The court shall render its decision and certify to and file with the secretary of state an explanatory statement it determines will meet the requirements of this chapter.

The decision of the superior court is final, and its explanatory statement is the established explanatory statement. The appeal must be heard without costs to either party.

Sec. 805. RCW 29.27.076 and 1967 c 96 s 3 are each amended to read as follows:

NOTICE OF CONSTITUTIONAL AMENDMENTS AND STATE MEASURES—EXPLANATORY STATEMENT. The attorney general shall, by the first day of July preceding each general election, prepare the explanatory statements required in RCW 29.27.074. Such statements shall be prepared in clear and concise language and shall avoid the use of legal and other technical terms insofar as possible. Any person dissatisfied with the explanatory statement so prepared may at any time within ten days from the filing thereof in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the proposed state measure, the explanatory statement prepared by the attorney general, and his or her objection thereto and praying for

the amendment thereof. A copy of the petition and a notice of such appeal shall be served on the secretary of state and the attorney general. The court shall, upon filing of the petition, examine the proposed state measure, the explanatory statement, and the objections thereto and may hear argument thereon and shall, as soon as possible, render its decision and certify to and file with the secretary of state such explanatory statement as it determines will meet the requirement of RCW 29.27.072 through 29.27.076. The decision of the superior court shall be final and its explanatory statement shall be the established explanatory statement. Such appeal shall be heard without costs to either party.

Sec. 806. RCW 29.81.240 and 1999 c 260 s 4 are each reenacted to read as follows:

ARGUMENTS. Committees shall write and submit arguments advocating the approval or rejection of each statewide ballot issue and rebuttals of those arguments. The secretary of state, the presiding officer of the senate, and the presiding officer of the house of representatives shall appoint the initial two members of each committee. In making these committee appointments the secretary of state and presiding officers of the senate and house of representatives shall consider legislators, sponsors of initiatives and referendums, and other interested groups known to advocate or oppose the ballot measure.

The initial two members may select up to four additional members, and the committee shall elect a chairperson. The remaining committee member or members may fill vacancies through appointment.

After the committee submits its initial argument statements to the secretary of state, the secretary of state shall transmit the statements to the opposite committee. The opposite committee may then prepare rebuttal arguments. Rebuttals may not interject new points.

The voters' pamphlet may contain only argument statements prepared according to this section. Arguments may contain graphs and charts supported by factual statistical data and pictures or other illustrations. Cartoons or caricatures are not permitted.

Sec. 807. RCW 29.81.250 and 2002 c 139 s 2 are each reenacted to read as follows:

FORMAT, LAYOUT, CONTENTS. The secretary of state shall determine the format and layout of the voters' pamphlet. The secretary of state shall print the pamphlet in clear, readable type on a size, quality, and weight of paper that in the judgment of the secretary of state best serves the voters. The pamphlet must contain a table of contents. Federal and state offices must appear in the pamphlet in the same sequence as they appear on the ballot. Measures and arguments must be printed in the order specified by RCW 29.79.300.

The voters' pamphlet must provide the following information for each statewide issue on the ballot:

- (1) The legal identification of the measure by serial designation or number;
- (2) The official ballot title of the measure;
- (3) A statement prepared by the attorney general explaining the law as it presently exists;
- (4) A statement prepared by the attorney general explaining the effect of the proposed measure if it becomes law;

- (5) The fiscal impact statement prepared under RCW 29.79.075;
- (6) The total number of votes cast for and against the measure in the senate and house of representatives, if the measure has been passed by the legislature;
- (7) An argument advocating the voters' approval of the measure together with any statement in rebuttal of the opposing argument;
- (8) An argument advocating the voters' rejection of the measure together with any statement in rebuttal of the opposing argument;
- (9) Each argument or rebuttal statement must be followed by the names of the committee members who submitted them, and may be followed by a telephone number that citizens may call to obtain information on the ballot measure;
- (10) The full text of each measure.

Sec. 808. RCW 29.81.260 and 1999 c 260 s 6 are each reenacted to read as follows:

AMENDATORY STYLE. Statewide ballot measures that amend existing law must be printed in the voters' pamphlet so that language proposed for deletion is enclosed by double parentheses and has a line through it. Proposed new language must be underlined. A statement explaining the deletion and addition of language must appear as follows: "Any language in double parentheses with a line through it is existing state law and will be taken out of the law if this measure is approved by voters. Any underlined language does not appear in current state law but will be added to the law if this measure is approved by voters."

Sec. 809. RCW 29.81.280 and 1999 c 260 s 8 are each reenacted to read as follows:

ARGUMENTS—REJECTION, DISPUTE. (1) If in the opinion of the secretary of state any argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate contains obscene matter or matter that is otherwise prohibited by law from distribution through the mail, the secretary may petition the superior court of Thurston County for a judicial determination that the argument or statement may be rejected for publication or edited to delete the matter. The court shall not enter such an order unless it concludes that the matter is obscene or otherwise prohibited for distribution through the mail.

(2)(a) A person who believes that he or she may be defamed by an argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate may petition the superior court of Thurston County for a judicial determination that the argument or statement may be rejected for publication or edited to delete the defamatory statement.

(b) The court shall not enter such an order unless it concludes that the statement is untrue and that the petitioner has a very substantial likelihood of prevailing in a defamation action.

(c) An action under this subsection (2) must be filed and served no later than the tenth day after the deadline for the submission of the argument or statement to the secretary of state.

(d) If the secretary of state notifies a person named or identified in an argument or statement of the contents of the argument or statement within three days after the deadline for submission to the secretary, then neither the state nor

the secretary is liable for damages resulting from publication of the argument or statement unless the secretary publishes the argument or statement in violation of an order entered under this section. Nothing in this section creates a duty on the part of the secretary of state to identify, locate, or notify the person.

(3) Parties to a dispute under this section may agree to resolve the dispute by rephrasing the argument or statement, even if the deadline for submission to the secretary has elapsed, unless the secretary determines that the process of publication is too far advanced to permit the change. The secretary shall promptly provide any such revision to any committee entitled to submit a rebuttal argument. If that committee has not yet submitted its rebuttal, its deadline to submit a rebuttal is extended by five days. If it has submitted a rebuttal, it may revise it to address the change within five days of the filing of the revised argument with the secretary.

(4) In an action under this section the committee or candidate must be named as a defendant, and may be served with process by certified mail directed to the address contained in the secretary's records for that party. The secretary of state shall be a nominal party to an action brought under subsection (2) of this section, solely for the purpose of determining the content of the voters' pamphlet. The superior court shall give such an action priority on its calendar.

Sec. 810. RCW 29.81.290 and 1999 c 260 s 9 are each reenacted to read as follows:

ARGUMENTS—PUBLIC INSPECTION. (1) An argument or statement submitted to the secretary of state for publication in the voters' pamphlet is not available for public inspection or copying until:

(a) In the case of candidate statements, (i) all statements by all candidates who have filed for a particular office have been received, except those who informed the secretary that they will not submit statements, or (ii) the deadline for submission of statements has elapsed;

(b) In the case of arguments supporting or opposing a measure, (i) the arguments on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed; and

(c) In the case of rebuttal arguments, (i) the rebuttals on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed.

(2) Nothing in this section prohibits the secretary from releasing information under RCW 29.81.280(2)(d).

Sec. 811. RCW 29.81.300 and 1999 c 260 s 10 are each reenacted to read as follows:

PHOTOGRAPHS. All photographs of candidates submitted for publication must conform to standards established by the secretary of state by rule. No photograph may reveal clothing or insignia suggesting the holding of a public office.

Sec. 812. RCW 29.81.310 and 1999 c 260 s 11 are each amended to read as follows:

CANDIDATES' STATEMENTS—LENGTH. (1) The maximum number of words for statements submitted by candidates is as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court

of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; president and vice president, United States senator, United States representative, and governor, three hundred words.

(2) Arguments written by committees under RCW ((29.81.230)) 29.81.240 (as recodified by this act) may not exceed two hundred fifty words in length.

(3) Rebuttal arguments written by committees may not exceed seventy-five words in length.

(4) The secretary of state shall allocate space in the pamphlet based on the number of candidates or nominees for each office.

Subpart 8.2 Local Voters' Pamphlet

Sec. 813. RCW 29.81A.010 and 1984 c 106 s 3 are each amended to read as follows:

AUTHORIZATION—CONTENTS—FORMAT. At least ninety days before any primary or general election, or at least forty days before any special election held under RCW 29.13.010 or 29.13.020, the legislative authority of any county or first-class or code city may adopt an ordinance authorizing the publication and distribution of a local voters' pamphlet. The pamphlet shall provide information on all measures within that jurisdiction and may, if specified in the ordinance, include information on candidates within that jurisdiction. If both a county and a first-class or code city within that county authorize a local voters' pamphlet for the same election, the pamphlet shall be produced jointly by the county and the first-class or code city. If no agreement can be reached between the county and first-class or code city, the county and first-class or code city may each produce a pamphlet. Any ordinance adopted authorizing a local voters' pamphlet may be for a specific primary, special election, or general election or for any future primaries or elections. The format of any local voters' pamphlet shall, whenever applicable, comply with the provisions of (~~chapters 29.80 and~~) chapter 29.81 RCW regarding the publication of the state candidates' and voters' pamphlets.

Sec. 814. RCW 29.81A.020 and 1994 c 191 s 1 are each amended to read as follows:

NOTICE OF PRODUCTION—LOCAL GOVERNMENTS' DECISION TO PARTICIPATE. (1) Not later than ninety days before the publication and distribution of a local voters' pamphlet by a county, the county auditor shall notify each city, town, or special taxing district located wholly within that county that a pamphlet will be produced.

(2) If a voters' pamphlet is published by the county for a primary or general election, the pamphlet shall be published for the elective offices and ballot measures of the county and for the elective offices and ballot measures of each unit of local government located entirely within the county which will appear on the ballot at that primary or election. However, the offices and measures of a first class or code city shall not be included in the pamphlet if the city publishes and distributes its own voters' pamphlet for the primary or election for its offices and measures. The offices and measures of any other town or city are not required to appear in the county's pamphlet if the town or city is obligated by

ordinance or charter to publish and distribute a voters' pamphlet for the primary or election for its offices and measures and it does so.

If the required appearance in a county's voters' pamphlet of the offices or measures of a unit of local government would create ~~((undo ~~undue~~))~~ undue financial hardship for the unit of government, the legislative authority of the unit may petition the legislative authority of the county to waive this requirement. The legislative authority of the county may provide such a waiver if it does so not later than sixty days before the publication of the pamphlet and it finds that the requirement would create such hardship.

(3) If a city, town, or district is located within more than one county, the respective county auditors may enter into an interlocal agreement to permit the distribution of each county's local voters' pamphlet into those parts of the city, town, or district located outside of that county.

(4) If a first-class or code city authorizes the production and distribution of a local voters' pamphlet, the city clerk of that city shall notify any special taxing district located wholly within that city that a pamphlet will be produced. Notification shall be provided in the manner required or provided for in subsection (1) of this section.

(5) A unit of local government located within a county and the county may enter into an interlocal agreement for the publication of a voters' pamphlet for offices or measures not required by subsection (2) of this section to appear in a county's pamphlet.

Sec. 815. RCW 29.81A.030 and 1984 c 106 s 5 are each reenacted to read as follows:

ADMINISTRATIVE RULES. The county auditor or, if applicable, the city clerk of a first-class or code city shall, in consultation with the participating jurisdictions, adopt and publish administrative rules necessary to facilitate the provisions of any ordinance authorizing production of a local voters' pamphlet. Any amendment to such a rule shall also be adopted and published. Copies of the rules shall identify the date they were adopted or last amended and shall be made available to any person upon request. One copy of the rules adopted by a county auditor and one copy of any amended rules shall be submitted to the county legislative authority. One copy of the rules adopted by a city clerk and one copy of any amended rules shall be submitted to the city legislative authority. These rules shall include but not be limited to the following:

(1) Deadlines for decisions by cities, towns, or special taxing districts on being included in the pamphlet;

(2) Limits on the length and deadlines for submission of arguments for and against each measure;

(3) The basis for rejection of any explanatory or candidates' statement or argument deemed to be libelous or otherwise inappropriate. Any statements by a candidate shall be limited to those about the candidate himself or herself;

(4) Limits on the length and deadlines for submission of candidates' statements;

(5) An appeal process in the case of the rejection of any statement or argument.

Sec. 816. RCW 29.81A.040 and 1984 c 106 s 6 are each amended to read as follows:

CONTENTS. The local voters' pamphlet shall include but not be limited to the following:

(1) Appearing on the cover, the words "official local voters' pamphlet," the name of the jurisdiction producing the pamphlet, (~~the jurisdictions that have measures or candidates in the pamphlet;~~) and the date of the election or primary;

(2) A list of jurisdictions that have measures or candidates in the pamphlet;

(3) Information on how a person may register to vote and obtain an absentee ballot;

~~((3))~~ (4) The text of each measure accompanied by an explanatory statement prepared by the prosecuting attorney for any county measure or by the attorney for the jurisdiction submitting the measure if other than a county measure. All explanatory statements for city, town, or district measures not approved by the attorney for the jurisdiction submitting the measure shall be reviewed and approved by the county prosecuting attorney or city attorney, when applicable, before inclusion in the pamphlet;

~~((4))~~ (5) The arguments for and against each measure submitted by committees selected pursuant to RCW 29.81A.080.

Sec. 817. RCW 29.81A.050 and 1984 c 106 s 7 are each reenacted to read as follows:

CANDIDATES, WHEN INCLUDED. If the legislative authority of a county or first-class or code city provides for the inclusion of candidates in the local voters' pamphlet, the pamphlet shall include the statements from candidates and may also include those candidates' photographs.

Sec. 818. RCW 29.81A.060 and 1984 c 106 s 8 are each reenacted to read as follows:

MAILING. As soon as practicable before the primary, special election, or general election, the county auditor, or if applicable, the city clerk of a first-class or code city, as appropriate, shall mail the local voters' pamphlet to every residence in each jurisdiction that has included information in the pamphlet. The county auditor or city clerk, as appropriate, may choose to mail the pamphlet to each registered voter in each jurisdiction that has included information in the pamphlet, if in his or her judgment, a more economical and effective distribution of the pamphlet would result. If the county or city chooses to mail the pamphlet to each residence, no notice of election otherwise required by RCW 29.27.080 need be published.

Sec. 819. RCW 29.81A.070 and 1984 c 106 s 9 are each reenacted to read as follows:

COST. The cost of a local voters' pamphlet shall be considered an election cost to those local jurisdictions included in the pamphlet and shall be prorated in the manner provided in RCW 29.13.045.

Sec. 820. RCW 29.81A.080 and 1994 c 191 s 2 are each reenacted to read as follows:

ARGUMENTS ADVOCATING APPROVAL AND DISAPPROVAL—PREPARATION BY COMMITTEES. For each measure from a unit of local government that is included in a local voters' pamphlet, the legislative authority of that jurisdiction shall, not later than forty-five days before the publication of the pamphlet, formally appoint a committee to prepare arguments advocating voters' approval of the measure and shall formally appoint a committee to

prepare arguments advocating voters' rejection of the measure. The authority shall appoint persons known to favor the measure to serve on the committee advocating approval and shall, whenever possible, appoint persons known to oppose the measure to serve on the committee advocating rejection. Each committee shall have not more than three members, however, a committee may seek the advice of any person or persons. If the legislative authority of a unit of local government fails to make such appointments by the prescribed deadline, the county auditor shall whenever possible make the appointments.

**PART 9
BALLOTS AND OTHER VOTING FORMS**

Sec. 901. RCW 29.27.020 and 1990 c 59 s 8 are each reenacted to read as follows:

CERTIFYING PRIMARY CANDIDATES. On or before the day following the last day for political parties to fill vacancies in the ticket as provided by RCW 29.18.150, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party designation, if any.

Sec. 902. RCW 29.27.057 and 2000 c 197 s 7 are each reenacted to read as follows:

CONSTITUTIONAL MEASURES—BALLOT TITLE—FORMULATION, BALLOT DISPLAY, CERTIFICATION. (1) When a proposed constitutional amendment is to be submitted to the people of the state for statewide popular vote, the ballot title consists of: (a) A statement of the subject of the amendment; (b) a concise description of the amendment; and (c) a question in the form prescribed in this section. The statement of the subject of a constitutional amendment must be sufficiently broad to reflect the nature of the amendment, sufficiently precise to give notice of the amendment's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, give a true and impartial description of the amendment's essential contents, clearly identify the amendment to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the amendment.

The ballot title for a proposed constitutional amendment must be displayed on the ballot substantially as follows:

"The legislature has proposed a constitutional amendment on (statement of subject). This amendment would (concise description). Should this constitutional amendment be:

Approved
Rejected

(2) When a proposed new constitution is submitted to the people of the state by a constitutional convention for statewide popular vote, the ballot title consists of: (a) A concise description of the new constitution; and (b) a question in the form prescribed in this section. The concise description must contain no more than thirty words, give a true and impartial description of the new constitution's essential contents, clearly identify the proposed constitution to be voted on, and

not, to the extent reasonably possible, create prejudice either for or against the new constitution.

The ballot title for a proposed new constitution must be displayed on the ballot substantially as follows:

"The constitutional convention approved a new proposed state constitution that (concise description). Should this proposed constitution be:

Approved
Rejected

(3) The legislature may specify the statement of subject or concise description, or both, in a constitutional amendment that it submits to the people. If the legislature fails to specify the statement of subject or concise description, or both, the attorney general shall prepare the material that was not specified. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

The attorney general shall specify the concise description for a proposed new constitution that is submitted to the people by a constitutional convention, and the concise description as so provided must be included as part of the ballot title unless changed on appeal.

(4) The secretary of state shall certify to the county auditors the ballot title for a proposed constitution, constitutional amendment, or other statewide question at the same time and in the same manner as the ballot titles to initiatives and referendums.

Sec. 903. RCW 29.27.061 and 2000 c 197 s 8 are each reenacted to read as follows:

CONSTITUTIONAL MEASURES—BALLOT TITLE—FILING. The ballot title for a constitutional amendment or proposed constitution must be filed with the secretary of state in the same manner as the ballot title and summary for a state initiative or referendum are filed.

Sec. 904. RCW 29.27.065 and 2000 c 197 s 9 are each reenacted to read as follows:

CONSTITUTIONAL, STATEWIDE QUESTIONS—NOTICE OF BALLOT TITLE AND SUMMARY. Upon the filing of a ballot title under RCW 29.27.057 or 29.27.0653, the secretary of state shall provide notice of the exact language of the ballot title and summary to the chief clerk of the house of representatives, the secretary of the senate, and the prime sponsor of measure.

Sec. 905. RCW 29.27.0653 and 2000 c 197 s 10 are each reenacted to read as follows:

STATEWIDE QUESTION—BALLOT TITLE—FORMULATION, BALLOT DISPLAY. (1) If the legislature submits a question to the people for a statewide popular vote that is not governed by RCW 29.79.035 or 29.27.057, the ballot title on the question consists of: (a) A description of the subject; and (b) a question in the form prescribed in this section. The statement of the subject of the question must be sufficiently broad to reflect the subject of the question, sufficiently precise to give notice of the question's subject matter, and not exceed ten words. The question must contain no more than thirty words.

The ballot title for such a question must be displayed on the ballot substantially as follows:

"The following question concerning (description of subject) has been submitted to the voters: (Question as submitted).

Yes
No

(2) The legislature may specify the statement of subject for a question and shall specify the question that it submits to the people. If the legislature fails to specify the statement of subject, the attorney general shall prepare the statement of subject. The statement of subject and question as so provided must be included as part of the ballot title unless changed on appeal.

Sec. 906. RCW 29.27.0655 and 2000 c 197 s 11 are each reenacted to read as follows:

CONSTITUTIONAL, STATEWIDE QUESTIONS—BALLOT TITLE—APPEAL. If any persons are dissatisfied with the ballot title for a proposed constitution, constitutional amendment, or question submitted under RCW 29.27.0653, they may at any time within ten days from the time of the filing of the ballot title and summary, not including Saturdays, Sundays, or legal holidays, appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title objected to, their objections to it, and praying for amendment of the ballot title. The time of the filing of the ballot title, as used in this section for establishing the time for appeal, is the time the ballot title is first filed with the secretary of state.

A copy of the petition on appeal together with a notice that an appeal has been taken must be served upon the secretary of state, the attorney general, the chief clerk of the house of representatives, and the secretary of the senate. Upon the filing of the petition on appeal, the court shall immediately, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the secretary of state a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final, and the ballot title so certified will be the established ballot title. The appeal must be heard without cost to either party.

Sec. 907. RCW 29.27.066 and 2000 c 197 s 12 are each reenacted to read as follows:

LOCAL MEASURES—BALLOT TITLE—FORMULATION—ADVERTISING. (1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. The ballot title must conform with the requirements and be displayed substantially as provided under RCW 29.79.035, except that the concise description must not exceed seventy-five words. If the local governmental unit is a city or a town, the concise statement shall be prepared by the city or town attorney. If the local

governmental unit is a county, the concise statement shall be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement shall be prepared by the prosecuting attorney of the county within which the majority area of the unit is located.

(2) A referendum measure on the enactment of a unit of local government shall be advertised in the manner provided for nominees for elective office.

(3) Subsection (1) of this section does not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition.

Sec. 908. RCW 29.27.0665 and 2000 c 197 s 13 are each reenacted to read as follows:

LOCAL MEASURES—BALLOT TITLE—NOTICE. Upon the filing of a ballot title of a question to be submitted to the people of a county or municipality, the county auditor shall provide notice of the exact language of the ballot title to the persons proposing the measure, the county or municipality, and to any other person requesting a copy of the ballot title.

Sec. 909. RCW 29.27.067 and 2000 c 197 s 14 are each reenacted to read as follows:

LOCAL MEASURES—BALLOT TITLE—APPEAL. If any persons are dissatisfied with the ballot title for a local ballot measure that was formulated by the city attorney or prosecuting attorney preparing the same, they may at any time within ten days from the time of the filing of the ballot title, not including Saturdays, Sundays, and legal holidays, appeal to the superior court of the county where the question is to appear on the ballot, by petition setting forth the measure, the ballot title objected to, their objections to it, and praying for amendment of it. The time of the filing of the ballot title, as used in this section in determining the time for appeal, is the time the ballot title is first filed with the county auditor.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the county auditor and the official preparing the ballot title. Upon the filing of the petition on appeal, the court shall immediately, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the county auditor a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final, and the ballot title or statement so certified will be the established ballot title. The appeal must be heard without cost to either party.

Sec. 910. RCW 29.30.005 and 1990 c 59 s 93 are each amended to read as follows:

NAMES ON PRIMARY BALLOT. Except for the candidates for the positions of president and vice president or for a partisan or nonpartisan office for which no primary is required, the names of all candidates who ~~((have)),~~ under this title, filed ~~((for nomination under chapter 29.18 RCW and those))~~ a declaration of candidacy, were certified as a candidate to fill a vacancy on a major party ticket, or were nominated as an independent ((candidates and candidates of)) or minor ~~((political parties who have been nominated under~~

~~chapter 29.24 RCW shall~~) party candidate will appear on the appropriate ballot at the primary throughout the jurisdiction in which they are to be nominated.

Sec. 911. RCW 29.30.010 and 1990 c 59 s 10 are each reenacted to read as follows:

UNIFORMITY, ARRANGEMENT, CONTENTS REQUIRED. Every ballot for a single combination of issues and offices shall be uniform within a precinct and shall identify the type of primary or election, the county, and the date of the primary or election, and the ballot or voting device shall contain instructions on the proper method of recording a vote, including write-in votes. Each position, together with the names of the candidates for that office, shall be clearly separated from other offices or positions in the same jurisdiction. The offices in each jurisdiction shall be clearly separated from each other. No paper ballot or ballot card may be marked in any way that would permit the identification of the person who voted that ballot.

Sec. 912. RCW 29.30.020 and 2001 c 30 s 5 are each reenacted to read as follows:

ORDER OF OFFICES AND ISSUES—PARTY INDICATION. (1) The positions or offices on a primary ballot shall be arranged in substantially the following order: United States senator; United States representative; governor; lieutenant governor; secretary of state; state treasurer; state auditor; attorney general; commissioner of public lands; superintendent of public instruction; insurance commissioner; state senator; state representative; county officers; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary ballot, the offices in each jurisdiction shall be grouped together and be in the order of the position numbers assigned to those offices, if any.

(2) The order of the positions or offices on an election ballot shall be substantially the same as on a primary ballot except that the offices of president and vice president of the United States shall precede all other offices on a presidential election ballot. State ballot issues shall be placed before all offices on an election ballot. The positions on a ballot to be assigned to ballot measures regarding local units of government shall be established by the secretary of state by rule.

(3) The political party or independent candidacy of each candidate for partisan office shall be indicated next to the name of the candidate on the primary and election ballot. A candidate shall file a written notice with the filing officer within three business days after the close of the filing period designating the political party to be indicated next to the candidate's name on the ballot if either: (a) The candidate has been nominated by two or more minor political parties or independent conventions; or (b) the candidate has both filed a declaration of candidacy declaring an affiliation with a major political party and been nominated by a minor political party or independent convention. If no written notice is filed the filing officer shall give effect to the party designation shown upon the first document filed. A candidate may be deemed nominated by a minor party or independent convention only if all documentation required by chapter 29.24 RCW has been timely filed.

Sec. 913. RCW 29.30.025 and 1990 c 59 s 80 are each reenacted to read as follows:

ORDER OF CANDIDATES ON BALLOTS. After the close of business on the last day for candidates to file for office, the filing officer shall, from among those filings made in person and by mail, determine by lot the order in which the names of those candidates will appear on all sample and absentee ballots. In the case of candidates for city, town, and district office, this procedure shall also determine the order for candidate names on the official primary ballot used at the polling place. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required for any nonpartisan office under RCW 29.15.150 or 29.21.015, the names shall appear on the general election ballot in the order determined by lot.

Sec. 914. RCW 29.30.040 and 1990 c 59 s 94 are each reenacted to read as follows:

PRIMARIES—ROTATING NAMES OF CANDIDATES. At primaries, the names of candidates for federal, state, and county partisan offices, for the office of superintendent of public instruction, and for judicial offices shall, for each office or position, be arranged initially in the order determined under RCW 29.30.025. Additional sets of ballots shall be prepared in which the positions of the names of all candidates for each office or position shall be changed as many times as there are candidates in the office or position in which there are the greatest number of names. As nearly as possible an equal number of ballots shall be prepared after each change. In making the changes of position between each set of ballots, the candidates for each such office in the first position under the office heading shall be moved to the last position under that office heading, and each other name shall be moved up to the position immediately above its previous position under that office heading. The effect of this rotation of the order of the names shall be that the name of each candidate for an office or position shall appear first, second, and so forth for that office or position on the ballots of a nearly equal number of registered voters in that jurisdiction. In a precinct using voting devices, the names of the candidates for each office shall appear in only one sequence in that precinct. The names of candidates for city, town, and district office on the ballot at the primary shall not be rotated.

Sec. 915. RCW 29.30.060 and 1991 c 363 s 33 are each reenacted to read as follows:

SAMPLE BALLOTS. Except in each county with a population of one million or more, on or before the fifteenth day before a primary or election, the county auditor shall prepare a sample ballot which shall be made readily available to members of the public. The secretary of state shall adopt rules governing the preparation of sample ballots in counties with a population of one million or more. The rules shall permit, among other alternatives, the preparation of more than one sample ballot by a county with a population of one million or more for a primary or election, each of which lists a portion of the offices and issues to be voted on in that county. The position of precinct committee officer shall be shown on the sample ballot for the general election, but the names of candidates for the individual positions need not be shown.

Sec. 916. RCW 29.30.081 and 1990 c 59 s 13 are each amended to read as follows:

ARRANGEMENT OF INSTRUCTIONS, MEASURES, OFFICES—ORDER OF CANDIDATES—NUMBERING OF BALLOTS. (1) On the top of

each ballot there ~~((shall))~~ will be printed instructions directing the voters how to mark the ballot, including write-in votes. After the instructions and before the offices ~~((shall be placed))~~, the questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election will be placed.

(2) The candidate or candidates of the major political party ~~((which))~~ that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election ~~((shall))~~ will appear first following the appropriate office heading, the candidate or candidates of the other major political parties ~~((shall))~~ will follow according to the votes cast for their nominees for president at the last presidential election, and independent candidates and the candidate or candidates of all other parties ~~((shall))~~ will follow in the order of their qualification with the secretary of state.

(3) The names of candidates for president and vice president for each political party ~~((shall))~~ must be grouped together with a single response position for a voter to indicate his or her choice.

(4) All paper ballots and ballot cards ~~((shall))~~ used at a polling place must be sequentially numbered in such a way to permit removal of such numbers without leaving any identifying marks on the ballot.

Sec. 917. RCW 29.30.085 and 1992 c 181 s 2 are each reenacted to read as follows:

NONPARTISAN CANDIDATES QUALIFIED FOR GENERAL ELECTION. (1) Except as provided in RCW 29.30.086 and in subsection (2) of this section, on the ballot at the general election for a nonpartisan office for which a primary was held, only the names of the candidate who received the greatest number of votes and the candidate who received the next greatest number of votes for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted, no candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary. On the ballot at the general election for any other nonpartisan office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29.30.025.

(2) On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed under the title of the office for that position.

Sec. 918. RCW 29.30.086 and 1992 c 181 s 1 are each reenacted to read as follows:

DISQUALIFIED CANDIDATES IN NONPARTISAN ELECTIONS—SPECIAL PROCEDURES. This section applies if a candidate for an elective office of a city, town, or special purpose district would, under this chapter, otherwise qualify to have his or her name printed on the general election ballot for the office, but the candidate has been declared to be unqualified to hold the office by a court of competent jurisdiction.

(1) In a case in which a primary is conducted for the office:

(a) If ballots for the general election for the office have not been ordered by the county auditor, the candidate who received the third greatest number of votes for the office at the primary shall qualify as a candidate for general election and that candidate's name shall be printed on the ballot for the office in lieu of the name of the disqualified candidate.

(b) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office shall not be counted for that office.

(2) In a case in which a primary is not conducted for the office:

(a) If ballots for the general election for the office have not been ordered by the county auditor, the name of the disqualified candidate shall not appear on the general election ballot for the office.

(b) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office shall not be counted for that office.

(3) If the disqualified candidate is the only candidate to have filed for the office during a regular or special filing period for the office, a void in candidacy for the office exists.

Sec. 919. RCW 29.30.095 and 1990 c 59 s 96 are each reenacted to read as follows:

PARTISAN CANDIDATES QUALIFIED FOR GENERAL ELECTION. The name of a candidate for a partisan office for which a primary was conducted shall not be printed on the ballot for that office at the subsequent general election unless the candidate receives a number of votes equal to at least one percent of the total number cast for all candidates for that position sought and a plurality of the votes cast for the candidates of his or her party for that office at the preceding primary.

Sec. 920. RCW 29.30.101 and 1999 c 298 s 11 are each reenacted to read as follows:

NAMES QUALIFIED TO APPEAR ON BALLOT. The names of the persons certified as nominees by the secretary of state or the county canvassing board shall be printed on the ballot at the ensuing election.

No name of any candidate whose nomination at a primary is required by law shall be placed upon the ballot at a general or special election unless it appears upon the certificate of either (1) the secretary of state, or (2) the county canvassing board, or (3) a minor party convention or the state or county central committee of a major political party to fill a vacancy on its ticket under RCW 29.18.160.

Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, a candidate's name shall not appear more than once upon a ballot for a position regularly nominated or elected at the same election.

Sec. 921. RCW 29.30.111 and 1999 c 224 s 2 are each reenacted to read as follows:

PROPERTY TAX LEVIES—BALLOT PROPOSITION FORM. (1) The ballot proposition authorizing a taxing district to impose the regular property tax levies authorized in RCW 36.69.145, 67.38.130, or 84.52.069 shall contain in substance the following:

"Shall the (insert the name of the taxing district) be authorized to impose regular property tax levies of (insert the maximum rate) or less per thousand dollars of assessed valuation for each of (insert the maximum number of years allowable) consecutive years?

Yes

No

Each voter shall indicate either "Yes" or "No" on his or her ballot in accordance with the procedures established under this title.

(2) The ballot proposition authorizing a taxing district to impose a permanent regular tax levy under RCW 84.52.069 shall contain the following:

"Shall the (insert the name of the taxing district) be authorized to impose a PERMANENT regular property levy of (insert the maximum rate) or less per thousand dollars of assessed valuation?

Yes

No

Sec. 922. RCW 29.30.130 and 1990 c 59 s 16 are each reenacted to read as follows:

EXPENSE OF PRINTING AND DISTRIBUTING BALLOT MATERIALS. The cost of printing ballots, ballot cards, and instructions and the delivery of this material to the precinct election officers shall be an election cost that shall be borne as determined under RCW 29.13.045 and 29.13.047, as appropriate.

**PART 10
ABSENTEE VOTING**

Sec. 1001. RCW 29.36.210 and 2001 c 241 s 1 are each reenacted to read as follows:

WHEN PERMITTED. Any registered voter of the state or any out-of-state voter, overseas voter, or service voter may vote by absentee ballot in any general election, special election, or primary in the manner provided in this chapter. Out-of-state voters, overseas voters, and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter.

Sec. 1002. RCW 29.36.220 and 2001 c 241 s 2 are each amended to read as follows:

REQUEST FOR SINGLE ABSENTEE BALLOT. (1) Except as otherwise provided by law, a registered voter or out-of-state voter, overseas voter, or service voter desiring to cast an absentee ballot at a single election or primary must request the absentee ballot from his or her county auditor no earlier than ninety days nor later than the day before the election or primary at which the person seeks to vote. Except as otherwise provided by law, the request may be made orally in person, by telephone, electronically, or in writing. An application or request for an absentee ballot made under the authority of a federal statute or regulation will be considered and given the same effect as a request for an absentee ballot under this chapter.

(2) A voter requesting an absentee ballot for a primary may also request an absentee ballot for the following general election. A request by an out-of-state voter, overseas voter, or service voter for an absentee ballot for a primary

election will be considered as a request for an absentee ballot for the following general election.

(3) In requesting an absentee ballot, the voter shall state the address to which the absentee ballot should be sent. A request for an absentee ballot from an out-of-state voter, overseas voter, or service voter must include the address of the last residence in the state of Washington and either a written application or the oath on the return envelope must include a declaration of the other qualifications of the applicant as an elector of this state. A request for an absentee ballot from any other voter must state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify that information from the voter registration records of the county.

(4) A request for an absentee ballot from a registered voter who is within this state must be made directly to the auditor of the county in which the voter is registered. An absentee ballot request from a registered voter who is temporarily outside this state or from an out-of-state voter, overseas voter, or service voter may be made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the request to the appropriate county auditor.

(5) No person, organization, or association may distribute absentee ballot applications within this state that contain a return address other than that of the appropriate county auditor.

Sec. 1003. RCW 29.36.230 and 2001 c 241 s 3 are each reenacted to read as follows:

REQUEST ON BEHALF OF FAMILY MEMBER. A member of a registered voter's family may request an absentee ballot on behalf of and for use by the voter. As a means of ensuring that a person who requests an absentee ballot is requesting the ballot for only that person or a member of the person's immediate family, an auditor may require a person who requests an absentee ballot to identify the date of birth of the voter for whom the ballot is requested and deny a request that is not accompanied by this information.

Sec. 1004. RCW 29.36.240 and 2001 c 241 s 4 are each reenacted to read as follows:

ONGOING ABSENTEE STATUS—REQUEST—TERMINATION. Any registered voter may apply, in writing, for status as an ongoing absentee voter. Each qualified applicant shall automatically receive an absentee ballot for each ensuing election or primary for which the voter is entitled to vote and need not submit a separate request for each election. Ballots received from ongoing absentee voters shall be validated, processed, and tabulated in the same manner as other absentee ballots.

Status as an ongoing absentee voter shall be terminated upon any of the following events:

- (1) The written request of the voter;
- (2) The death or disqualification of the voter;
- (3) The cancellation of the voter's registration record;
- (4) The return of an ongoing absentee ballot as undeliverable; or
- (5) Upon placing a voter on inactive status under RCW 29.10.071.

Sec. 1005. RCW 29.36.250 and 2001 c 241 s 5 are each amended to read as follows:

SPECIAL ABSENTEE BALLOTS. (1) As provided in this section, county auditors shall provide special absentee ballots to be used for state primary or state general elections. An auditor shall provide a special absentee ballot only to a registered voter who completes an application stating that she or he will be unable to vote and return a regular absentee ballot by normal mail delivery within the period provided for regular absentee ballots.

The application for a special absentee ballot may not be filed earlier than ninety days before the applicable state primary or general election. The special absentee ballot will list the offices and measures, if known, scheduled to appear on the state primary or general election ballot. The voter may use the special absentee ballot to write in the name of any eligible candidate for each office and vote on any measure.

(2) With any special absentee ballot issued under this section, the county auditor shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that primary or election and a list of any issues that have been referred to the ballot before the time of the application.

(3) Write-in votes on special absentee ballots must be counted in the same manner provided by law for the counting of other write-in votes. The county auditor shall process and canvass the special absentee ballots provided under this section in the same manner as other absentee ballots under ~~((chapters 29.36))~~ this chapter and chapter 29.62 RCW (as recodified by this act).

(4) A voter who requests a special absentee ballot under this section may also request an absentee ballot under RCW 29.36.220(4). If the regular absentee ballot is properly voted and returned, the special absentee ballot is void, and the county auditor shall reject it in whole when special absentee ballots are canvassed.

Sec. 1006. RCW 29.36.260 and 2001 c 241 s 6 are each amended to read as follows:

ISSUANCE OF BALLOT AND OTHER MATERIALS. (1) The county auditor shall issue an absentee ballot for the primary or election for which it was requested, or for the next occurring primary or election when ongoing absentee status has been requested if the information contained in a request for an absentee ballot or ongoing absentee status received by the county auditor is complete and correct and the applicant is qualified to vote under federal or state law. Otherwise, the county auditor shall notify the applicant of the reason or reasons why the request cannot be accepted. Whenever two or more candidates have filed for the position of precinct committee officer for the same party in the same precinct at a general election held in an even-numbered year, the contest for that position must be presented to absentee voters from that precinct by either including the contest on the regular absentee ballot or a separate absentee ballot. The ballot must provide space designated for writing in the name of additional candidates.

(2) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each replacement ballot provided under this subsection.

(3) A copy of the state voters' (~~and candidates'~~) pamphlet must be sent to registered voters temporarily outside the state, out-of-state voters, overseas voters, and service voters along with the absentee ballot if such a pamphlet has been prepared for the primary or election and is available to the county auditor at the time of mailing. The county auditor shall mail all absentee ballots and related material to voters outside the territorial limits of the United States and the District of Columbia under 39 U.S.C. 3406.

Sec. 1007. RCW 29.36.270 and 1987 c 54 s 1 are each reenacted to read as follows:

DATE BALLOTS READY. Except where a recount or litigation under RCW 29.04.030 is pending, the county auditor shall have sufficient absentee ballots ready to mail to absentee voters of that county at least twenty days before any primary, general election, or special election.

Sec. 1008. RCW 29.36.280 and 2001 c 241 s 7 are each reenacted to read as follows:

DELIVERY OF BALLOT, QUALIFICATIONS FOR. The delivery of an absentee ballot for any primary or election shall be subject to the following qualifications:

(1) Only the registered voter personally, or a member of the registered voter's immediate family may pick up an absentee ballot for the voter at the office of the issuing officer unless the voter is a resident of a health care facility, as defined by RCW 70.37.020(3), on election day and applies by messenger for an absentee ballot. In this latter case, the messenger may pick up the voter's absentee ballot.

(2) Except as noted in subsection (1) of this section, the issuing officer shall mail or deliver the absentee ballot directly to each applicant.

Sec. 1009. RCW 29.36.290 and 2001 c 241 s 8 are each reenacted to read as follows:

ENVELOPES AND INSTRUCTIONS. The county auditor shall send each absentee voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The larger return envelope must contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. For out-of-state voters, overseas voters, and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward absentee ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.

Sec. 1010. RCW 29.36.300 and 2001 c 241 s 9 are each reenacted to read as follows:

OBSERVERS. County auditors must request that observers be appointed by the major political parties to be present during the processing of absentee ballots. The absence of the observers will not prevent the processing of absentee ballots if the county auditor has requested their presence.

Sec. 1011. RCW 29.36.310 and 2001 c 241 s 10 are each reenacted to read as follows:

PROCESSING INCOMING BALLOTS. (1) The opening and subsequent processing of return envelopes for any primary or election may begin on or after the tenth day before the primary or election. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until after 8:00 p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) Before opening a returned absentee ballot, the canvassing board, or its designated representatives, shall examine the postmark, statement, and signature on the return envelope that contains the security envelope and absentee ballot. They shall verify that the voter's signature on the return envelope is the same as the signature of that voter in the registration files of the county. For registered voters casting absentee ballots, the date on the return envelope to which the voter has attested determines the validity, as to the time of voting for that absentee ballot if the postmark is missing or is illegible. For out-of-state voters, overseas voters, and service voters, the date on the return envelope to which the voter has attested determines the validity as to the time of voting for that absentee ballot. For any absentee ballot, a variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

Sec. 1012. RCW 29.36.320 and 2001 c 241 s 11 are each reenacted to read as follows:

REPORT OF COUNT. The absentee ballots must be reported at a minimum on a congressional and legislative district basis. Absentee ballots may be counted by congressional or legislative district or by individual precinct, except as required under RCW 29.62.090(2).

These returns must be added to the total of the votes cast at the polling places.

Sec. 1013. RCW 29.36.340 and 1991 c 81 s 33 are each reenacted to read as follows:

RECORD OF REQUESTS—PUBLIC ACCESS. Each county auditor shall maintain in his or her office, open for public inspection, a record of the requests he or she has received for absentee ballots under this chapter.

The information from the requests shall be recorded and lists of this information shall be available no later than twenty-four hours after their receipt.

This information about absentee voters shall be available according to the date of the requests and by legislative district. It shall include the name of each applicant, the address and precinct in which the voter maintains a voting residence, the date on which an absentee ballot was issued to this voter, if applicable, the type of absentee ballot, and the address to which the ballot was or is to be mailed, if applicable.

The auditor shall make copies of these records available to the public for the actual cost of production or copying.

Sec. 1014. RCW 29.36.350 and 2001 c 241 s 13 are each reenacted to read as follows:

CHALLENGES. The qualifications of any absentee voter may be challenged at the time the signature on the return envelope is verified and the ballot is processed by the canvassing board. The board has the authority to determine the legality of any absentee ballot challenged under this section. Challenged ballots must be handled in accordance with chapter 29.10 RCW.

Sec. 1015. RCW 29.36.360 and 1993 c 417 s 7 are each amended to read as follows:

~~((The secretary of state shall adopt rules to:~~

~~(1) Establish standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;~~

~~(2) Establish standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;~~

~~(3) Provide uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections; and~~

~~(4) Facilitate the operation of the provisions of this chapter regarding out-of-state voters, overseas voters, and service voters.))~~

The secretary of state shall produce and furnish envelopes and instructions for out-of-state voters, overseas voters, and service voters to the county auditors.

PART 11 POLLING PLACE ELECTIONS AND POLL WORKERS

Subpart 11.1 General Provisions

Sec. 1101. RCW 29.51.010 and 1990 c 59 s 39 are each reenacted to read as follows:

INTERFERENCE WITH VOTER PROHIBITED. No person may interfere with a voter in any way within the polling place. This does not prevent the voter from receiving assistance in preparing his or her ballot as provided in RCW 29.51.200.

Sec. 1102. RCW 29.51.125 and 1977 ex.s. c 361 s 83 are each amended to read as follows:

DETERMINATION OF WHO HAS AND WHO HAS NOT VOTED. At any election, general or special, or at any primary, any political party or committee may designate a person other than a precinct election officer, for each polling place to check a list of registered voters of the precinct to determine who has and who has not voted(~~(: PROVIDED, That such)~~). The lists ((shall)) must be furnished by the party or committee concerned.

Sec. 1103. RCW 29.51.180 and 1990 c 59 s 47 are each reenacted to read as follows:

TAKING PAPERS INTO VOTING BOOTH. Any voter may take into the voting booth or voting device any printed or written material to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove the material when he or she leaves the polls.

Sec. 1104. RCW 29.51.190 and 1990 c 59 s 48 are each reenacted to read as follows:

OFFICIAL BALLOTS—VOTE ONLY ONCE—INCORRECTLY MARKED BALLOTS. No ballots may be used in any polling place other than those prepared by the county auditor. No voter is entitled to vote more than once at a primary or a general or special election, except that if a voter incorrectly marks a ballot, he or she may return it and be issued a new ballot. The precinct election officers shall void the incorrectly marked ballot and return it to the county auditor.

Sec. 1105. RCW 29.54.037 and 1999 c 158 s 10 are each reenacted to read as follows:

BALLOT PICK UP, DELIVERY, AND TRANSPORTATION. (1) At the direction of the county auditor, a team or teams composed of a representative of at least two major political parties shall stop at designated polling places and pick up the sealed containers of voted, untallied ballots for delivery to the counting center. There may be more than one delivery from each polling place. Two precinct election officials, representing two major political parties, shall seal the voted ballots in containers furnished by the county auditor and properly identified with his or her address with uniquely prenumbered seals.

(2) At the counting center or the collection stations where the sealed ballot containers are delivered by the designated representatives of the major political parties, the county auditor or a designated representative of the county auditor shall receive the sealed ballot containers, record the time, date, precinct name or number, and seal number of each ballot container.

Sec. 1106. RCW 29.48.010 and 1999 c 158 s 4 are each reenacted to read as follows:

VOTING BOOTHS. The county auditor shall provide in each polling place a sufficient number of voting booths or voting devices along with any supplies necessary to enable the voter to mark or register his or her choices on the ballot and within which the voters may cast their votes in secrecy.

Sec. 1107. RCW 29.13.080 and 1973 c 78 s 1 are each reenacted to read as follows:

OPENING AND CLOSING POLLS. At all primaries and elections, general or special, in all counties the polls must be kept open from seven o'clock a.m. to eight o'clock p.m. All qualified electors who are at the polling place at eight o'clock p.m., shall be allowed to cast their votes.

Sec. 1108. RCW 29.51.240 and 1990 c 59 s 50 are each reenacted to read as follows:

POLLS OPEN CONTINUOUSLY—ANNOUNCEMENT OF CLOSING. The polls for a precinct shall remain open continuously until the time specified under RCW 29.13.080. At that time, the precinct election officers shall announce that the polls for that precinct are closed.

Sec. 1109. RCW 29.51.185 and 1987 c 346 s 13 are each amended to read as follows:

DOUBLE VOTING PROHIBITED. A registered voter shall not be allowed to vote in the precinct in which he or she is registered at any election or primary for which that voter has cast an absentee ballot. A registered voter who has requested an absentee ballot for a primary or special or general election but chooses to vote at the voter's precinct polling place in that primary or election shall cast a provisional ballot (~~in the manner prescribed by RCW 29.10.127 for challenged ballots~~). The canvassing board shall not count the ballot if it finds that the voter has also voted by absentee ballot in that primary or election.

Subpart 11.2 Procedures

Sec. 1110. RCW 29.48.030 and 1990 c 59 s 36 are each reenacted to read as follows:

DELIVERY OF SUPPLIES. No later than the day before a primary or election, the county auditor shall provide to the inspector or one of the judges of each precinct or to one of the inspectors of a polling place where more than one precinct will be voting, all of the ballots, precinct lists of registered voters, and other supplies necessary for conducting the election or primary.

Sec. 1111. RCW 29.07.170 and 1994 c 57 s 19 are each reenacted to read as follows:

DELIVERY OF PRECINCT LISTS TO POLLS. Upon closing of the registration files preceding an election, the county auditor shall deliver the precinct lists of registered voters to the inspector or one of the judges of each precinct or group of precincts located at the polling place before the polls open.

Sec. 1112. RCW 29.48.035 and 1977 ex.s. c 361 s 82 are each amended to read as follows:

ADDITIONAL SUPPLIES FOR PAPER BALLOTS. In precincts where votes are cast on paper ballots, the following supplies, in addition to those specified in RCW 29.48.030 (~~as now or hereafter amended, shall~~), must be provided:

(1) Two tally books in which the names of the candidates (~~shall~~) will be listed in the order in which they appear on the sample ballots and in each case have the proper party designation at the head thereof;

(2) Two certificates or two sample ballots prepared as blanks, for recording of the unofficial results by the precinct election officers.

Sec. 1113. RCW 29.57.130 and 1999 c 298 s 17 are each reenacted to read as follows:

VOTING AND REGISTRATION INSTRUCTIONS AND INFORMATION. (1) Each county auditor shall provide voting and registration

instructions, printed in large type, to be conspicuously displayed at each polling place and permanent registration facility.

(2) The county auditor shall make information available for deaf persons throughout the state by telecommunications.

Sec. 1114. RCW 29.48.020 and 1977 ex.s. c 361 s 80 are each reenacted to read as follows:

TIME FOR ARRIVAL OF OFFICERS. The precinct election officers for each precinct shall meet at the designated polling place at the time set by the county auditor.

Sec. 1115. RCW 29.48.070 and 1990 c 59 s 37 are each reenacted to read as follows:

INSPECTION OF VOTING EQUIPMENT. Before opening the polls for a precinct, the voting equipment shall be inspected to determine if it has been properly prepared for voting. If the voting equipment is capable of direct tabulation of each voter's choices, the precinct election officers shall verify that no votes have been registered for any issue or office to be voted on at that primary or election. Any ballot box shall be carefully examined by the judges of election to determine that it is empty. The ballot box shall then be sealed or locked. The ballot box shall not be opened before the certification of the primary or election except in the manner and for the purposes provided under this title.

Sec. 1116. RCW 29.48.090 and 1965 c 9 s 29.48.090 are each reenacted to read as follows:

DISPLAY OF FLAG. At all primaries and elections the flag of the United States shall be conspicuously displayed in front of each polling place.

Sec. 1117. RCW 29.48.100 and 1990 c 59 s 38 are each reenacted to read as follows:

ANNOUNCEMENT OPENING THE POLLS. The precinct election officers, immediately before they start to issue ballots or permit a voter to vote, shall announce at the place of voting that the polls for that precinct are open.

Sec. 1118. RCW 29.51.150 and 1990 c 59 s 45 are each reenacted to read as follows:

VOTING DEVICES—PERIODIC EXAMINATION. The precinct election officers shall periodically examine the voting devices to determine if they have been tampered with.

Sec. 1119. RCW 29.51.050 and 1990 c 59 s 40 are each amended to read as follows:

ISSUING BALLOT TO VOTER—CHALLENGE. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter (~~shall~~) must be issued a ballot or permitted to enter a voting booth or to operate a voting device. The number of the ballot or the voter (~~shall~~) must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29.10.125 and 29.10.127 apply to that voter.

Sec. 1120. RCW 29.51.060 and 1990 c 59 s 41 are each amended to read as follows:

SIGNATURE REQUIRED TO VOTE—PROCEDURE IF VOTER UNABLE TO SIGN NAME. ~~((If any person appears))~~ Any person desiring to vote at any primary or election ((as a registered voter in the jurisdiction where the primary or election is being held, the precinct election officers shall require the voter)) is required to sign his or her name ~~((and current address subject to penalties of perjury in one of))~~ on the appropriate precinct list((s)) of registered voters. If the ~~((person))~~ voter registered using a mark, or can no longer sign his or her name, the election officers shall require the ~~((person offering to vote))~~ voter to be identified by another registered voter.

~~((As soon as it is determined that the person is qualified to vote, one of))~~ The precinct election officers shall ((enter)) then record the voter's name ~~((in a second poll book)).~~

Sec. 1121. RCW 29.51.100 and 1990 c 59 s 43 are each amended to read as follows:

CASTING VOTE. On signing the precinct list of registered voters or being issued a ballot, the voter shall, without leaving the polling place, proceed to one of the voting booths or voting devices to cast his or her vote. ~~((If the voter was issued a ballot))~~ When the voter has finished, he or she shall either (1) remove the ((number)) numbered stub from the ballot, place the ballot in the ballot box, and return the number to the precinct election officers, or ~~((shall))~~ (2) deliver ((it)) the entire ballot to the precinct election officers, who shall remove the ~~((number))~~ numbered stub from the ballot and place the ballot in the ballot box.

Sec. 1122. RCW 29.51.070 and 1990 c 59 s 42 are each reenacted to read as follows:

RECORD OF PARTICIPATION. As each voter casts his or her vote, the precinct election officers shall insert in the poll books or precinct list of registered voters opposite that voter's name, a notation to credit the voter with having participated in that primary or election. The precinct election officers shall record the voter's name so that a separate record is kept.

Sec. 1123. RCW 29.51.200 and 1981 c 34 s 1 are each amended to read as follows:

DISABLED VOTERS. Voting shall be secret except to the extent necessary to assist sensory or physically ~~((handicapped))~~ disabled voters.

If any voter declares in the presence of the election officers that because of sensory or physical ~~((handicap))~~ disability he or she is unable to register or record his or her vote, he or she may designate a person of his or her choice or two election officers from opposite political parties to enter the voting machine booth with him or her and record his or her vote as he or she directs.

Sec. 1124. RCW 29.54.018 and 1990 c 59 s 54 are each amended to read as follows:

TABULATION OF PAPER BALLOTS BEFORE CLOSE OF POLLS. (1) Paper ballots may be tabulated at the precinct polling place before the closing of the polls ~~((under rules adopted by the secretary of state)).~~ The tabulation of ballots, paper or otherwise, shall be open to the public, but no persons except those employed and authorized by the county auditor may touch a ballot card or ballot container or operate vote tallying equipment.

(2) The results of the tabulation of paper ballots at the polls shall be delivered to the county auditor as soon as the tabulation is complete.

Sec. 1125. RCW 29.51.250 and 1990 c 59 s 51 are each reenacted to read as follows:

VOTERS IN POLLING PLACE AT CLOSING TIME. If at the time of closing the polls, there are any voters in the polling place who have not voted, they shall be allowed to vote after the polls have been closed.

Sec. 1126. RCW 29.54.010 and 1990 c 59 s 52 are each amended to read as follows:

UNUSED BALLOTS. At each precinct immediately after the last qualified voter has cast his or her vote, the precinct election officers shall (~~identify and seal~~) render unusable and secure in a container all unused ballots for that precinct and (~~seal them in a container to be returned~~) return them to the county auditor.

Sec. 1127. RCW 29.54.015 and 1990 c 59 s 53 are each amended to read as follows:

DUTIES OF ELECTION OFFICERS AFTER SECURING BALLOTS. Immediately after the (~~close of the polls and the completion of voting~~) unused ballots are secure, the precinct election officers shall count the number of voted ballots and make a record of any discrepancy between this number and the number of voters who signed the poll book for that precinct or polling place, complete the certifications in the poll book, prepare the ballots for transfer to the counting center if necessary, and seal the voting devices.

Sec. 1128. RCW 29.07.180 and 1994 c 57 s 20 are each reenacted to read as follows:

RETURN OF PRECINCT LISTS AFTER ELECTION—PUBLIC RECORDS. The precinct list of registered voters for each precinct or group of precincts delivered to the precinct election officers for use on the day of an election held in that precinct shall be returned by them to the county auditor upon the completion of the count of the votes cast in the precinct at that election. While in possession of the county auditor they shall be open to public inspection under such reasonable rules and regulations as may be prescribed therefor.

Subpart 11.3 Poll-site Ballot Counting Devices

Sec. 1129. RCW 29.48.080 and 1999 c 158 s 6 are each reenacted to read as follows:

INITIALIZATION. In precincts where poll-site ballot counting devices are used the election officers, before initializing the device for voting, shall proceed as follows:

(1) They shall see that the device is placed where it can be conveniently attended by the election officers and conveniently operated by the voters;

(2) They shall see whether the number or other designating mark on the device's seal agrees with the control number provided by the elections department. If they do not agree they shall at once notify the elections department and delay initializing the device. The polls may be opened pending reexamination of the device;

(3) If the numbers do agree, they shall proceed to initialize the device and see whether the public counter registers "000." If the counter is found to register a number other than "000," one of the judges shall at once set the counter at "000" and confirm that the ballot box is empty;

(4) Before processing any ballots through a poll-site ballot counting device a zero report must be produced. The inspector and at least one of the judges shall carefully verify that zero ballots have been run through the poll-site ballot counting device and that all vote totals for each office are zero. If the totals are not zero, the inspector shall either reset the device to zero or contact the elections department to reset the device and allow voting to continue using the auxiliary or emergency device.

Sec. 1130. RCW 29.48.045 and 1999 c 158 s 5 are each reenacted to read as follows:

DELIVERY AND SEALING. Whenever poll-site ballot counting devices are used, the devices may either be included with the supplies required in RCW 29.48.030 or they may be delivered to the polling place separately. All poll-site ballot counting devices must be sealed with a unique numbered seal at the time of final preparation and logic and accuracy testing. A log must be made of all seal numbers and device numbers used.

Sec. 1131. RCW 29.54.093 and 1999 c 158 s 11 are each reenacted to read as follows:

MEMORY PACKS. The programmed memory pack for each poll-site ballot counting device must be sealed into the device during final preparation and logic and accuracy testing. Except in the case of a device breakdown, the memory pack must remain sealed in the device until after the polls have closed and all reports and telephonic or electronic transfer of results are completed. After all reporting is complete the precinct election officers responsible for transferring the sealed voted ballots under RCW 29.54.075 shall ensure that the memory pack is returned to the elections department. If the entire poll-site ballot counting device is returned, the memory pack must remain sealed in the device. If the poll-site ballot counting device is to remain at the polling place, the precinct election officer shall break the seal on the device and remove the memory pack and seal and return it along with the irregularly voted ballots and special ballots to the elections department on election day.

Sec. 1132. RCW 29.51.115 and 1999 c 158 s 7 are each reenacted to read as follows:

INCORRECTLY MARKED BALLOTS. Each poll-site ballot counting device must be programmed to return all blank ballots and overvoted ballots to the voter for private reexamination. The election officer shall take whatever steps are necessary to ensure that the secrecy of the ballot is maintained. The precinct election officer shall provide information and instruction on how to properly mark the ballot. The voter may remark the original ballot, may request a new ballot under RCW 29.51.190, or may choose to complete a special ballot envelope and return the ballot as a special ballot.

Sec. 1133. RCW 29.51.155 and 1999 c 158 s 8 are each reenacted to read as follows:

FAILURE OF DEVICE. If a poll-site ballot counting device fails to operate at any time during polling hours, voting must continue, and the ballots must be

deposited for later tabulation in a secure ballot compartment separate from the tabulated ballots.

Subpart 11.4 Poll Workers

Sec. 1134. RCW 29.45.010 and 1991 c 106 s 1 are each amended to read as follows:

APPOINTMENT OF JUDGES AND INSPECTOR. (1) At least ten days prior to any primary or election, general or special, the county auditor shall appoint one inspector and two judges of election for each precinct (or each combination of precincts temporarily consolidated as a single precinct for that primary or election), other than those precincts designated as vote-by-mail precincts pursuant to RCW ((~~29.36.120~~) 29.38.010 (as recodified by this act)). Except as provided in subsection (3) of this section, the persons appointed shall be among those whose names are contained on the lists furnished under RCW 29.45.030 by the chairpersons of the county central committees of the political parties entitled to representation thereon. Such precinct election officers, whenever possible, should be residents of the precinct in which they serve.

(2) The county auditor may delete from the lists of names submitted to the auditor by the chairpersons of the county central committees under RCW 29.45.030: (a) The names of those persons who indicate to the auditor that they cannot or do not wish to serve as precinct election officers for the primary or election or who otherwise cannot so serve; and (b) the names of those persons who lack the ability to conduct properly the duties of an inspector or judge of election after training in that proper conduct has been made available to them by the auditor. The lists which are submitted to the auditor in a timely manner under RCW 29.45.030, less the deletions authorized by this subsection, constitute the official nomination lists for inspectors and judges of election.

(3) If the number of persons whose names are on the official nomination list for a political party is not sufficient to satisfy the requirements of subsection (4) of this section as it applies to that political party or is otherwise insufficient to provide the number of precinct election officials required from that political party, the auditor shall notify the chair of the party's county central committee regarding the deficiency. The chair may, within five business days of being notified by the auditor, add to the party's nomination list the names of additional persons belonging to that political party who are qualified to serve on the election boards. To the extent that, following this procedure, the number of persons whose names appear on the official nomination lists of the political parties is insufficient to provide the number of election inspectors and judges required for a primary or election, the auditor may appoint a properly trained person whose name does not appear on such a list as an inspector or judge of election for a precinct.

(4) The county auditor shall designate the inspector and one judge in each precinct from that political party which polled the highest number of votes in the county for its candidate for president at the last preceding presidential election and one judge from that political party polling the next highest number of votes in the county for its candidate for president at the same election. The provisions of this subsection apply only if the number of names on the official nomination

list for inspectors and judges of election for a political party is sufficient to satisfy the requirements imposed by this subsection.

(5) Except as provided in RCW 29.45.040 for the filling of vacancies, this shall be the exclusive method for the appointment of inspectors and judges to serve as precinct election officers at any primary or election, general or special, and shall supersede the provisions of any and all other statutes, whether general or special in nature, having different requirements.

Sec. 1135. RCW 29.45.020 and 1965 ex.s. c 101 s 2 are each amended to read as follows:

APPOINTMENT OF CLERKS—PARTY REPRESENTATION—HOUR TO REPORT. At the same time the officer having jurisdiction of the election appoints the inspector and two judges as provided in RCW 29.45.010, he or she may appoint one or more persons to act as clerks if in his or her judgment such additional persons are necessary, except that in precincts in which voting machines are used, the judges of election shall perform the duties required to be performed by clerks.

Each clerk appointed shall represent a major political party(~~(=PROVIDED; That))~~). The political party representation of a single set of precinct election officers shall, whenever possible, be equal but, in any event, no single political party shall be represented by more than a majority of one at each polling place.

The election officer having jurisdiction of the election may designate at what hour the clerks shall report for duty. The hour may vary among the precincts according to the judgment of the appointing officer.

Sec. 1136. RCW 29.45.030 and 1991 c 106 s 2 are each amended to read as follows:

NOMINATION. The precinct committee officer of each major political party shall certify to the officer's county chair a list of those persons belonging to the officer's political party qualified to act upon the election board in the officer's precinct.

By the first day of June each year, the chair of the county central committee of each major political party shall certify to the officer having jurisdiction of the election a list of those persons belonging to the county chair's political party in each precinct who are qualified to act on the election board therein.

The county chair shall compile this list from the names certified by the various precinct committee officers unless no names or not (~~(a)~~) a sufficient (~~(number of)~~) number of names have been certified from a precinct, in which event the county chair may include therein the names of qualified members of the county chair's party selected by the county chair. The county chair shall also have the authority to substitute names of persons recommended by the precinct committee officers if in the judgment of the county chair such persons are not qualified to serve as precinct election officers.

Sec. 1137. RCW 29.45.040 and 1965 c 9 s 29.45.040 are each reenacted to read as follows:

VACANCIES—HOW FILLED—INSPECTOR'S AUTHORITY. If no election officers have been appointed for a precinct, or if at the hour for opening the polls none of those appointed is present at the polling place therein, the voters present may appoint the election board for that precinct. One of the judges may perform the duties of clerk of election. The inspector shall have the

power to fill any vacancy that may occur in the board of judges, or by absence or refusal to serve of either of the clerks after the polls shall have been opened.

Sec. 1138. RCW 29.45.050 and 1994 c 223 s 91 are each amended to read as follows:

ONE SET OF PRECINCT ELECTION OFFICERS, EXCEPTIONS—COUNTING BOARD—RECEIVING BOARD. There shall be but one set of election officers at any one time in each precinct except as provided in this section.

In every precinct using paper ballots having two hundred or more registered voters there shall be appointed, and in every precinct having less than two hundred registered voters there may be appointed, at a state primary or state general election, two or more sets of precinct election officers as provided in RCW 29.04.020 and 29.45.010. The officer in charge of the election may appoint one or more counting boards at his or her discretion, when he or she decides that because of a long or complicated ballot or because of the number of expected voters, there is need of additional counting board or boards to improve the speed and accuracy of the count.

In making such appointments, one or more sets of precinct election officers shall be designated as the counting board or boards, the first of which shall consist of an inspector, two judges, and a clerk and the second set, if activated, shall consist of two judges and two clerks. The duties of the counting board or boards shall be the count of ballots cast and the return of the election records and supplies to the officer having jurisdiction of the election.

One set of precinct election officers shall be designated as the receiving board which shall have all other powers and duties imposed by law for such elections. Nothing in this section prevents the county auditor from appointing relief or replacement precinct election officers at any time during election day. Relief or replacement precinct election officers must be of the same political party as the officer they are relieving or replacing.

Sec. 1139. RCW 29.45.060 and 1990 c 59 s 74 are each reenacted to read as follows:

DUTIES—GENERALLY. The inspector and judges of election in each precinct shall conduct the elections therein and receive, deposit, and count the ballots cast thereat and make returns to the proper canvassing board or officer except that when two or more sets of precinct election officers are appointed as provided in RCW 29.45.050, the ballots shall be counted by the counting board or boards as provided in RCW 29.54.015, 29.54.018, and 29.85.225.

Sec. 1140. RCW 29.45.065 and 1973 c 102 s 5 are each reenacted to read as follows:

APPLICATION TO OTHER PRIMARIES OR ELECTIONS. All of the provisions of RCW 29.45.050 and 29.45.060 relating to counting boards may be applied on an optional basis to any other primary or election, regular or special, at the discretion of the officer in charge of the election.

Sec. 1141. RCW 29.45.070 and 1965 c 9 s 29.45.070 are each amended to read as follows:

INSPECTOR AS CHAIR—AUTHORITY. The inspector shall be (~~chairman~~) the chair of the board and after its organization (~~shall have power~~

te)) administer all necessary oaths ((which)) that may be required in the progress of the election.

Sec. 1142. RCW 29.45.080 and 1965 c 9 s 29.45.080 are each reenacted to read as follows:

OATHS OF OFFICERS REQUIRED. The inspector, judges, and clerks of election, before entering upon the duties of their offices, shall take and subscribe the prescribed oath or affirmation which shall be administered to them by any person authorized to administer oaths and verified under the hand of the person by whom such oath or affirmation is administered. If no such person is present, the inspector shall administer the same to the judges and clerks, and one of the judges shall administer the oath to the inspector.

The county auditor shall furnish two copies of the proper form of oath to each precinct election officer, one copy thereof, after execution, to be placed and transmitted with the election returns.

Sec. 1143. RCW 29.45.090 and 1965 c 9 s 29.45.090 are each reenacted to read as follows:

OATH OF INSPECTORS, FORM. The following shall be the form of the oath or affirmation to be taken by each inspector:

"I, A B, do swear (or affirm) that I will duly attend to the ensuing election, during the continuance thereof, as an inspector, and that I will not receive any ballot or vote from any person other than such as I firmly believe to be entitled to vote at such election, without requiring such evidence of the right to vote as is directed by law; nor will I vexatiously delay the vote of, or refuse to receive, a ballot from any person whom I believe to be entitled to vote; but that I will in all things truly, impartially, and faithfully perform my duty therein to the best of my judgment and abilities; and that I am not, directly nor indirectly, interested in any bet or wager on the result of this election."

Sec. 1144. RCW 29.45.100 and 1965 c 9 s 29.45.100 are each reenacted to read as follows:

OATH OF JUDGES, FORM. The following shall be the oath or affirmation of each judge:

"We, A B, do swear (or affirm) that we will as judges duly attend the ensuing election, during the continuance thereof, and faithfully assist the inspector in carrying on the same; that we will not give our consent to the receipt of any vote or ballot from any person, other than one whom we firmly believe to be entitled to vote at such election; and that we will make a true and perfect return of the said election and will in all things truly, impartially, and faithfully perform our duty respecting the same to the best of our judgment and abilities; and that we are not directly nor indirectly interested in any bet or wager on the result of this election."

Sec. 1145. RCW 29.45.110 and 1965 c 9 s 29.45.110 are each reenacted to read as follows:

OATH OF CLERKS, FORM. The following shall be the form of the oath to be taken by the clerks:

"We, and each of us, A B, do swear (or affirm) that we will impartially and truly write down the name of each elector who votes at the ensuing election, and also the name of the county and precinct wherein the elector resides; that we will carefully and truly write down the number of votes given for each candidate at

the election as often as his name is read to us by the inspector and in all things truly and faithfully perform our duty respecting the same to the best of our judgment and abilities, and that we are not directly nor indirectly interested in any bet or wager on the result of this election."

Sec. 1146. RCW 29.45.120 and 1971 ex.s. c 124 s 2 are each amended to read as follows:

COMPENSATION. The fees of officers of election shall be as follows:

To the judges and clerks of an election not less than the minimum hourly wage per hour as provided under RCW 49.46.020 (~~as now or hereafter amended~~), the exact amount to be fixed by the respective boards of county commissioners for each county. To inspectors, the rate paid to judges and clerks plus an additional two hours' compensation. The precinct election officer picking up the election supplies and returning the election returns to the county auditor shall be entitled to additional compensation, the exact amount to be determined by the respective boards of county commissioners for each county.

PART 12 VOTE BY MAIL BALLOTS

Sec. 1201. RCW 29.38.010 and 2001 c 241 s 15 are each reenacted to read as follows:

MAIL BALLOT PRECINCTS. The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29.07.160 as a mail ballot precinct. The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting in his or her precinct will be by mail ballot only. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29.36.240 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29.62.090.

As soon as ballots are available, the county auditor shall mail or deliver a ballot and an envelope, preaddressed to the issuing officer, to each active registered voter. The auditor shall send each inactive voter either a ballot or an application to receive a ballot. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active.

If the precinct exceeds two hundred registered voters, or the auditor determines to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used.

Sec. 1202. RCW 29.38.020 and 2001 c 241 s 16 are each reenacted to read as follows:

SPECIAL ELECTIONS. At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29.13.010 or 29.13.020 may also request that the special election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be

conducted by mail ballot. The decision of the county auditor in this regard is final.

For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than twenty days before the date of such election, make available to each registered voter a mail ballot. The auditor shall handle inactive voters in the same manner as inactive voters in mail ballot precincts.

Sec. 1203. RCW 29.38.030 and 2001 c 241 s 17 are each reenacted to read as follows:

ODD-YEAR PRIMARIES. In an odd-numbered year, the county auditor may conduct a primary or a special election by mail ballot concurrently with the primary:

(1) For an office or ballot measure of a special purpose district that is entirely within the county;

(2) For an office or ballot measure of a special purpose district that lies in the county and one or more other counties if the auditor first secures the concurrence of the county auditors of those other counties to conduct the primary in this manner district-wide; and

(3) For a ballot measure or nonpartisan office of a county, city, or town if the auditor first secures the concurrence of the legislative authority of the county, city, or town involved.

The county auditor shall notify an election jurisdiction for which a primary is to be held that the primary will be conducted by mail ballot.

A primary in an odd-numbered year may not be conducted by mail ballot in a precinct with two hundred or more active registered voters if a partisan office or state office or state ballot measure is to be voted upon at that primary in the precinct.

To the extent they are not inconsistent with other provisions of law, the laws governing the conduct of mail ballot special elections apply to nonpartisan primaries conducted by mail ballot.

Sec. 1204. RCW 29.38.040 and 2001 c 241 s 18 are each amended to read as follows:

DEPOSITING BALLOTS—REPLACEMENT BALLOTS. (1) If a county auditor conducts an election by mail, the county auditor shall designate one or more places for the deposit of ballots not returned by mail. The places designated under this section shall be open on the date of the election for a period of thirteen hours, beginning at 7:00 a.m. and ending at 8:00 p.m.

(2) A registered voter may obtain a replacement ballot as provided in this subsection (~~if the ballot is destroyed, damaged, lost, or not received by the voter~~). A voter may request a replacement mail ballot in person, by mail, by telephone, or by other electronic transmission for himself or herself and for any member of his or her immediate family. The request must be received by the auditor before 8:00 p.m. on election day. The county auditor shall keep a record of each replacement ballot issued, including the date of the request. Replacement mail ballots may be counted in the final tabulation of ballots only if the original ballot is not received by the county auditor and the replacement ballot meets all requirements for tabulation necessary for the tabulation of regular mail ballots.

Sec. 1205. RCW 29.38.050 and 2001 c 241 s 19 are each reenacted to read as follows:

RETURN OF VOTED BALLOT. The voter shall return the ballot to the county auditor in the return identification envelope. If mailed, a ballot must be postmarked not later than the date of the primary or election. Otherwise, the ballot must be deposited at the office of the county auditor or the designated place of deposit not later than 8:00 p.m. on the date of the primary or election.

Sec. 1206. RCW 29.38.060 and 2001 c 241 s 20 are each amended to read as follows:

BALLOT CONTENTS—COUNTING. All mail ballots authorized by RCW 29.38.010 or 29.38.020 or 29.38.030 must contain the same offices, names of nominees or candidates, and propositions to be voted upon, including precinct offices, as if the ballot had been voted in person at the polling place. Except as otherwise provided by law, mail ballots must be treated in the same manner as absentee ballots issued at the request of the voter. If electronic vote tallying devices are used, political party observers must be given the opportunity to be present, and a test of the equipment must be performed as required by RCW 29.33.350 before tabulating ballots. Political party observers may select at random ballots to be counted manually as provided by RCW 29.54.025. ~~((Any violation of the secrecy of the count is subject to the same penalties as provided for in RCW 29.85.225.))~~

PART 13 PRIMARIES AND ELECTIONS

Subpart 13.1 General

Sec. 1301. RCW 29.15.150 and 1973 c 4 s 3 are each reenacted to read as follows:

ELECTIONS TO FILL UNEXPIRED TERM—NO PRIMARY, WHEN. Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no September primary election shall be held in the odd-numbered year if, after the last day allowed for candidates to withdraw, either of the following circumstances exist:

(1) No more than one candidate of each qualified political party has filed a declaration of candidacy for the same partisan office to be filled; or

(2) No more than two candidates have filed a declaration of candidacy for a single nonpartisan office to be filled.

In either event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the September primary ballot, but for the provisions of this section, shall be printed as nominees for the positions sought upon the November general election ballot.

Subpart 13.2
Partisan Primaries

Sec. 1302. RCW 29.18.010 and 1990 c 59 s 78 are each reenacted to read as follows:

APPLICATION OF CHAPTER. Candidates for the following offices shall be nominated at partisan primaries held pursuant to the provisions of this chapter:

- (1) Congressional offices;
- (2) All state offices except (a) judicial offices and (b) the office of superintendent of public instruction;
- (3) All county offices except (a) judicial offices and (b) those offices where a county home rule charter provides otherwise.

Sec. 1303. RCW 29.18.120 and 1990 c 59 s 87 are each reenacted to read as follows:

GENERAL ELECTION LAWS GOVERN PRIMARIES. So far as applicable, the provisions of this title relating to conducting general elections shall govern the conduct of primaries.

Sec. 1304. RCW 29.18.200 and 1990 c 59 s 88 are each reenacted to read as follows:

BLANKET PRIMARY AUTHORIZED. Except as provided otherwise in chapter 29.19 RCW, all properly registered voters may vote for their choice at any primary held under this title, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter.

Subpart 13.3
Nonpartisan Primaries

Sec. 1305. RCW 29.21.010 and 1990 c 59 s 89 are each reenacted to read as follows:

LOCAL PRIMARIES. All city and town primaries shall be nonpartisan. Primaries for special purpose districts, except those districts that require ownership of property within the district as a prerequisite to voting, shall be nonpartisan. City, town, and district primaries shall be held as provided in RCW 29.13.070.

The purpose of this section is to establish the holding of a primary, subject to the exemptions in RCW 29.21.015, as a uniform procedural requirement to the holding of city, town, and district elections. These provisions supersede any and all other statutes, whether general or special in nature, having different election requirements.

Sec. 1306. RCW 29.21.015 and 1998 c 19 s 1 are each reenacted to read as follows:

WHEN NO LOCAL PRIMARY PERMITTED—PROCEDURE. (1) No primary may be held for any single position in any city, town, district, or district court, as required by RCW 29.21.010, if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall, as soon as possible, notify all the candidates

so affected that the office for which they filed will not appear on the primary ballot.

(2) No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

(3) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by RCW 29.30.025.

Sec. 1307. RCW 29.21.070 and 1990 c 59 s 91 are each reenacted to read as follows:

NONPARTISAN OFFICES SPECIFIED. The offices of superintendent of public instruction, justice of the supreme court, judge of the court of appeals, judge of the superior court, and judge of the district court shall be nonpartisan and the candidates therefor shall be nominated and elected as such.

All city, town, and special purpose district elective offices shall be nonpartisan and the candidates therefor shall be nominated and elected as such.

Sec. 1308. RCW 29.21.410 and 1972 ex.s. c 61 s 7 are each amended to read as follows:

SPECIAL ELECTION TO FILL UNEXPIRED TERM. Whenever it ~~((shall be))~~ is necessary to hold a special election to fill an unexpired term of an elective office of any city, town, or district, ~~((such))~~ the special election ~~((shall))~~ must be held in concert with the next general election ~~((which))~~ that is to be held by the respective city, town, or district concerned for the purpose of electing officers to full terms ~~((: PROVIDED, That))~~. This section ~~((shall))~~ does not apply to any city of the first class whose charter provision relating to elections to fill unexpired terms are inconsistent ~~((herewith))~~ with this section.

Subpart 13.4 Notices and Certificates

Sec. 1309. RCW 29.27.030 and 1965 c 9 s 29.27.030 are each amended to read as follows:

NOTICE OF PRIMARY. Not more than ten nor less than three days ~~((prior to))~~ before the primary ~~((election))~~ the county auditor shall publish notice of such primary in one or more newspapers of general circulation within the county. ~~((Said))~~ The notice ~~((shall))~~ must contain the proper party designations, the names and addresses of all persons who have filed a declaration of candidacy to be voted upon at that primary ~~((election))~~, the hours during which the polls will be open, and ~~((that the election will be held in the regular))~~ the polling places ~~((in))~~ for each precinct, giving the address of each polling place ~~((: PROVIDED, That))~~. The names of all candidates for nonpartisan offices ~~((shall))~~ must be published separately with designation of the offices for which they are candidates but without party designation. This ~~((shall be))~~ is the only notice required for the holding of any primary ~~((election))~~.

Sec. 1310. RCW 29.27.050 and 1990 c 59 s 9 are each reenacted to read as follows:

CERTIFICATION OF NOMINEES. No later than the day following the certification of the returns of any primary, the secretary of state shall certify to

the appropriate county auditors, the names of all persons nominated for offices, the returns of which have been canvassed by the secretary of state.

Sec. 1311. RCW 29.27.072 and 1997 c 405 s 1 are each reenacted to read as follows:

NOTICE OF CONSTITUTIONAL AMENDMENTS AND STATE MEASURES—METHOD. Subject to the availability of funds appropriated specifically for that purpose, the secretary of state shall publish notice of the proposed constitutional amendments and other state measures that are to be submitted to the people at a state general election up to four times during the four weeks immediately preceding that election in every legal newspaper in the state. The secretary of state shall supplement this publication with an equivalent amount of radio and television advertisements.

Sec. 1312. RCW 29.27.074 and 1997 c 405 s 2 are each reenacted to read as follows:

NOTICE OF CONSTITUTIONAL AMENDMENTS AND STATE MEASURES—CONTENTS. The newspaper and broadcast notice required by Article XXIII, section 1, of the state Constitution and RCW 29.27.072 may set forth all or some of the following information:

- (1) A legal identification of the state measure to be voted upon.
- (2) The official ballot title of such state measure.
- (3) A brief statement explaining the constitutional provision or state law as it presently exists.
- (4) A brief statement explaining the effect of the state measure should it be approved.
- (5) The total number of votes cast for and against the measure in both the state senate and house of representatives.

No individual candidate or incumbent public official may be referred to or identified in these notices or advertisements.

Sec. 1313. RCW 29.27.080 and 1999 c 4 s 1 are each amended to read as follows:

NOTICE OF ELECTION—CERTIFICATION OF MEASURES. ~~((H))~~ Except as provided in RCW 29.81A.060, notice for any state, county, district, or municipal election, whether special or general, ~~((shall))~~ must be given by at least one publication not more than ten nor less than three days ~~((prior to))~~ before the election by the county auditor or the officer conducting the election as the case may be, in one or more newspapers of general circulation within the county. ~~((Said))~~ The legal notice ~~((shall))~~ must contain the title of each office under the proper party designation, the names and addresses of all officers who have been nominated for an office to be voted upon at that election, together with the ballot titles of all measures, the hours during which the polls will be open, and ~~((that the election will be held in the regular))~~ the polling places ~~((in))~~ for each precinct, giving the address of each polling place ~~((= PROVIDED, That))~~. The names of all candidates for nonpartisan offices ~~((shall))~~ must be published separately with designation of the offices for which they are candidates but without party designation. This ~~((shall be))~~ is the only notice required for a state, county, district, or municipal general or special election and ~~((shall))~~ supersedes the provisions of any and all other statutes, whether general or

special in nature, having different requirements for the giving of notice of any general or special elections.

~~((2) All school district elections held on February 5, 1980, at which the number and proportion of persons required by law voted to authorize bonds or tax levies, are hereby validated regardless of any failure to publish notice of such election. No action challenging the validity of any such election may be brought later than April 15, 1980, or thirty days from June 12, 1980, whichever is later. Notice of provisions of this subsection shall be published within five days after February 28, 1980, in a newspaper of general circulation within each county where a school district election was held on February 5, 1980, and where notice of such election was not published as provided in subsection (1) of this section.~~

~~(3) All school district elections held on May 19, 1998, at which the number and proportion of persons required by law voted to authorize bonds or tax levies, are hereby validated regardless of any failure to publish notice of such election. No action challenging the validity of any such election may be brought later than thirty days after January 29, 1999. Notice of provisions of this subsection shall be published within five days after January 29, 1999, in a newspaper of general circulation within each county where a school district election was held on May 19, 1998, and where notice of such election was not published as provided in subsection (1) of this section.)~~

Sec. 1314. RCW 29.27.100 and 1965 c 9 s 29.27.100 are each amended to read as follows:

CERTIFICATES OF ELECTION TO OFFICERS ELECTED IN SINGLE COUNTY OR LESS. Immediately after the ascertainment of the result of an election for an office to be filled by the voters of a single county, or of a precinct, or of a constituency within a county for which ((he)) the county auditor serves as supervisor of elections, the county auditor shall notify the person elected, and ((upon his demand)) issue to ((him)) the person a certificate of ((his)) election.

Sec. 1315. RCW 29.27.110 and 1965 c 9 s 29.27.110 are each amended to read as follows:

CERTIFICATES OF ELECTION TO OTHER OFFICERS. Except as provided in the state Constitution, the governor shall issue certificates of election to those elected as senator or representative in the Congress of the United States and to state offices. The secretary of state shall issue certificates of election to those elected to the office of judge of the superior court in judicial districts comprising more than one county and to those elected to either branch of the state legislature in legislative districts comprising more than one county.

PART 14 SPECIAL CIRCUMSTANCES ELECTIONS

Subpart 14.1 Presidential Primary

Sec. 1401. RCW 29.19.010 and 1989 c 4 s 1 are each amended to read as follows:

INTENT. The people of the state of Washington declare that:

(1) The current presidential nominating caucus system in Washington state is unnecessarily restrictive of voter participation in that it discriminates against

the elderly, the infirm, women, the (~~handicapped~~) disabled, evening workers, and others who are unable to attend caucuses and therefore unable to fully participate in this most important quadrennial event that occurs in our democratic system of government.

(2) It is the intent of this chapter to make the presidential selection process more open and representative of the will of the people of our state.

(3) A presidential primary will afford the maximum opportunity for voter access at regular polling places during the daytime and evening hours convenient to the most people.

(4) This state's participation in the selection of presidential candidates shall be in accordance with the will of the people as expressed in a presidential preference primary.

(5) It is the intent of this chapter, to the maximum extent practicable, to continue to reserve to the political parties the right to conduct their delegate selection as prescribed by party rules insofar as it reflects the will of the people as expressed in a presidential primary election conducted every four years in the manner described by this chapter.

Sec. 1402. RCW 29.19.020 and 1995 1st sp.s. c 20 s 1 are each reenacted to read as follows:

DATE. (1) On the fourth Tuesday in May of each year in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may vote for the nominee of a major political party for the office of president. The secretary of state may propose an alternative date for the primary no later than the first day of August of the year before the year in which a president is to be nominated and elected.

(2) No later than the first day of September of the year before the year in which a presidential nominee is selected, the state committee of any major political party that will use the primary results for candidates of that party may propose an alternative date for that primary.

(3) If an alternative date is proposed under subsection (1) or (2) of this section, a committee consisting of the chair and the vice-chair of the state committee of each major political party, the secretary of state, the majority leader and minority leader of the senate, and the speaker and the minority leader of the house of representatives shall meet and, if affirmed by a two-thirds vote of the members of the committee, the date of the primary shall be changed. The committee shall meet and decide on the proposed alternate date not later than the first day of October of the year before the year in which a presidential nominee is selected. The secretary of state shall convene and preside over the meeting of the committee. A committee member other than a legislator may appoint, in writing, a designee to serve on his or her behalf. A legislator who is a member of the committee may appoint, in writing, another legislator to serve on his or her behalf.

(4) If an alternate date is approved under this section, the secretary of state shall adopt rules under RCW 29.19.070 to adjust the deadlines in RCW 29.19.030 and related provisions of this chapter to correspond with the date that has been approved.

Sec. 1403. RCW 29.19.030 and 1989 c 4 s 3 are each reenacted to read as follows:

BALLOT—NAMES INCLUDED. The name of any candidate for a major political party nomination for president of the United States shall be printed on the presidential preference primary ballot of a major political party only:

(1) By direction of the secretary of state, who in the secretary's sole discretion has determined that the candidate's candidacy is generally advocated or is recognized in national news media; or

(2) If members of the political party of the candidate have presented a petition for nomination of the candidate that has attached to the petition a sheet or sheets containing the signatures of at least one thousand registered voters who declare themselves in the petition as being affiliated with the same political party as the presidential candidate. The petition shall be filed with the secretary of state not later than the thirty-ninth day before the presidential preference primary. The signature sheets shall also contain the residence address and name or number of the precinct of each registered voter whose signature appears thereon and shall be certified in the manner prescribed in RCW 29.79.200 and 29.79.210.

The secretary of state shall place the name of the candidate on the ballot unless the candidate, at least thirty-five days before the presidential preference primary, executes and files with the secretary of state an affidavit stating without qualification that he or she is not now and will not become a candidate for the office of president of the United States at the forthcoming presidential election. The secretary of state shall certify the names of all candidates who will appear on the presidential preference primary ballot to the respective county auditors on or before the fourth Tuesday in April of each presidential election year.

Sec. 1404. RCW 29.19.045 and 1995 1st sp.s. c 20 s 2 are each reenacted to read as follows:

PROCEDURES—BALLOT FORM AND ARRANGEMENT. (1) Except where necessary to accommodate the national or state rules of a major political party or where this chapter specifically provides otherwise, the presidential primary must be conducted in substantially the same manner as a state partisan primary under this title.

(2) Except as provided under this chapter or by rule of the secretary of state adopted under RCW 29.19.070, the arrangement and form of presidential primary ballots must be substantially as provided for a partisan primary under this title. Whenever requested by a major political party, a separate ballot containing only the candidates of that party who have qualified under RCW 29.19.030 must be provided for a voter who requests a ballot of that party. A primary ballot, containing the names of all the candidates who have qualified for a place on the ballot under RCW 29.19.030, must be provided for nonaffiliated voters.

(3) The ballot must list alphabetically the names of all candidates for the office of president. The ballot must indicate the political party of each candidate adjacent to the name of that candidate. Each ballot must include a blank space to allow the voter to write in the name of any other candidate.

(4) A presidential primary ballot with votes for more than one candidate is void, and notice to this effect, stated in clear, simple language and printed in large type, must appear on the face of each presidential primary ballot or on or about each voting device.

Sec. 1405. RCW 29.19.055 and 1995 1st sp.s. c 20 s 3 are each reenacted to read as follows:

ALLOCATION OF DELEGATES—PARTY DECLARATIONS. (1) A major political party may, under national or state party rules, base the allocation of delegates from this state to the national nominating convention of that party in whole or in part on the participation in precinct caucuses and conventions conducted under the rules of that party.

(2) If requested by a major political party, the secretary of state shall adopt rules under RCW 29.19.070 to provide for any declaration required by that party.

(3) Voters who subscribe to a specific political party declaration under this section must be given ballots that are readily distinguishable from those given to other voters. Votes cast by persons making these declarations must be tabulated and reported separately from other votes cast at the primary and may be used by a major political party in its allocation of delegates under the rules of that party.

(4) For a political party that requires a specific voter declaration under this section, the secretary of state shall prescribe rules for providing, to the state and county committees of that political party, a copy of the declarations or a list of the voters who participated in the presidential nominating process of that party.

Sec. 1406. RCW 29.19.080 and 1995 1st sp.s. c 20 s 5 are each reenacted to read as follows:

COSTS. Subject to available funds specifically appropriated for this purpose, whenever a presidential primary is held as provided by this chapter, the state of Washington shall assume all costs of holding the primary if it is held alone. If any other election or elections are held at the same time, the state is liable only for a prorated share of the costs. The county auditor shall determine the costs, including the state's prorated share, if applicable, in the same manner as provided under RCW 29.13.045 and shall file a certified claim with the secretary of state. The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out this section. Reimbursements for primary costs must be from appropriations specifically provided by law for that purpose.

Suhpart 14.2 Recall

Sec. 1407. RCW 29.82.010 and 1984 c 170 s 1 are each amended to read as follows:

INITIATING PROCEEDINGS—STATEMENT—CONTENTS—VERIFICATION—DEFINITIONS. Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, ~~((he or they))~~ the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of ~~((his))~~ the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated ~~((his))~~ the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give a detailed description including the

approximate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that ~~((he or they))~~ the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.

For the purposes of this chapter:

(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and

(b) Additionally, "malfeasance" in office means the commission of an unlawful act;

(2) "Violation of the oath of office" means the ~~((wilful))~~ neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

Sec. 1408. RCW 29.82.015 and 1984 c 170 s 2 are each reenacted to read as follows:

PETITION—WHERE FILED. Any person making a charge shall file it with the elections officer whose duty it is to receive and file a declaration of candidacy for the office concerning the incumbent of which the recall is to be demanded. The officer with whom the charge is filed shall promptly (1) serve a copy of the charge upon the officer whose recall is demanded, and (2) certify and transmit the charge to the preparer of the ballot synopsis provided in RCW 29.82.021. The manner of service shall be the same as for the commencement of a civil action in superior court.

Sec. 1409. RCW 29.82.021 and 1984 c 170 s 3 are each amended to read as follows:

BALLOT SYNOPSIS. (1) Within fifteen days after receiving a charge, the officer specified below shall formulate a ballot synopsis of the charge of not more than two hundred words.

(a) Except as provided in (b) of this subsection, if the recall is demanded of an elected public officer whose political jurisdiction encompasses an area in more than one county, the attorney general shall be the preparer, except if the recall is demanded of the attorney general, the chief justice of the supreme court shall be the preparer.

(b) If the recall is demanded of an elected public officer whose political jurisdiction lies wholly in one county, or if the recall is demanded of an elected public officer of a district whose jurisdiction encompasses more than one county but whose declaration of candidacy is filed with a county auditor in one of the counties, the prosecuting attorney of that county shall be the preparer, except that if the prosecuting attorney is the officer whose recall is demanded, the attorney general shall be the preparer.

(2) The synopsis shall set forth the name of the person charged, the title of ~~((his))~~ the office, and a concise statement of the elements of the charge. Upon completion of the ballot synopsis, the preparer shall certify and transmit the exact language of the ballot synopsis to the persons filing the charge and the officer subject to recall. The preparer shall additionally certify and transmit the charges and the ballot synopsis to the superior court of the county in which the

officer subject to recall resides and shall petition the superior court to approve the synopsis and to determine the sufficiency of the charges.

Sec. 1410. RCW 29.82.023 and 1984 c 170 s 4 are each reenacted to read as follows:

DETERMINATION BY SUPERIOR COURT—CORRECTION OF BALLOT SYNOPSIS. Within fifteen days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. The clerk of the superior court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The court shall not consider the truth of the charges, but only their sufficiency. An appeal of a sufficiency decision shall be filed in the supreme court as specified by RCW 29.82.160. The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final. The court shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate.

Sec. 1411. RCW 29.82.025 and 1984 c 170 s 5 are each amended to read as follows:

FILING SIGNATURES—TIME LIMITS. (1) The sponsors of a recall demanded of any public officer shall stop circulation of and file all petitions with the appropriate elections officer not less than six months before the next general election in which the officer whose recall is demanded is subject to reelection.

(2) The sponsors of a recall demanded of an officer elected to a statewide position shall have a maximum of two hundred seventy days, and the sponsors of a recall demanded of any other officer shall have a maximum of one hundred eighty days, in which to obtain and file supporting signatures after the issuance of a ballot synopsis by the superior court. If the decision of the superior court regarding the sufficiency of the charges is not appealed, the one hundred eighty or two hundred seventy day period for the circulation of signatures begins on the sixteenth day following the decision of the superior court. If the decision of the superior court regarding the sufficiency of the charges is appealed, the one hundred eighty or two hundred seventy day period for the circulation of signatures begins on the day following the issuance of the decision by the supreme court.

Sec. 1412. RCW 29.82.030 and 1984 c 170 s 6 are each amended to read as follows:

PETITION—FORM. Recall petitions ((shall)) must be printed on single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. No petition may be circulated or signed prior to the first day of the one hundred eighty or two hundred seventy day period established by RCW 29.82.025 for that recall petition. ((Such)) The petitions ((shall)) must be substantially in the following form:

((WARNING

Every person who signs this petition with any other than his true name, or who knowingly (1) signs more than one of these petitions, (2) signs this petition when he is not a legal voter, or (3) makes herein any false statement, may be fined, or imprisoned, or both.)) The warning prescribed by RCW 29.79.115; followed by:

Petition for the recall of (here insert the name of the office and of the person whose recall is petitioned for) to the Honorable (here insert the name and title of the officer with whom the charge is filed).

We, the undersigned citizens and legal voters of (the state of Washington or the political subdivision in which the recall is to be held), respectfully direct that a special election be called to determine whether or not (here insert the name of the person charged and the office which he or she holds) be recalled and discharged from his or her office, for and on account of (his or her having committed the act or acts of malfeasance or misfeasance while in office, or having violated his or her oath of office, as the case may be), in the following particulars: (here insert the synopsis of the charge); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the precinct and city (or town) and county written after my name, and my residence address is correctly stated, and to my knowledge, have signed this petition only once.

((Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)				
1 -----	-----	-----	-----	-----
2 -----	-----	-----	-----	-----
3 -----	-----	-----	-----	-----
ete.))				

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Sec. 1413. RCW 29.82.040 and 1965 c 9 s 29.82.040 are each amended to read as follows:

PETITION—SIZE. Each recall petition at the time of circulating, signing, and filing with the officer with whom it is to be filed, ~~((shall))~~ must consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title, and form of petition on each sheet, and a full, true, and correct copy of the original statement of the charges against the officer referred to therein, printed on sheets of paper of like size and quality as the petition, firmly fastened together.

Sec. 1414. RCW 29.82.060 and 1991 c 363 s 36 are each reenacted to read as follows:

NUMBER OF SIGNATURES REQUIRED. When the person, committee, or organization demanding the recall of a public officer has secured sufficient signatures upon the recall petition the person, committee, or organization may submit the same to the officer with whom the charge was filed for filing in his or her office. The number of signatures required shall be as follows:

(1) In the case of a state officer, an officer of a city of the first class, a member of a school board in a city of the first class, or a county officer of a county with a population of forty thousand or more—signatures of legal voters equal to twenty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

(2) In the case of an officer of any political subdivision, city, town, township, precinct, or school district other than those mentioned in subsection (1) of this section, and in the case of a state senator or representative—signatures of legal voters equal to thirty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

Sec. 1415. RCW 29.82.080 and 1965 c 9 s 29.82.080 are each amended to read as follows:

CANVASSING PETITION FOR SUFFICIENCY OF SIGNATURES—TIME OF—NOTICE. Upon the filing of a recall petition (~~in his office~~), the officer with whom the charge was filed shall stamp on each petition the date of filing, and shall notify the persons filing them and the officer whose recall is demanded of the date when the petitions will be canvassed, which date (~~shall~~) must be not less than five or more than ten days from the date of its filing.

Sec. 1416. RCW 29.82.090 and 1984 c 170 s 7 are each reenacted to read as follows:

VERIFICATION AND CANVASS OF SIGNATURES—PROCEDURE—STATISTICAL SAMPLING. (1) Upon the filing of a recall petition, the elections officer shall proceed to verify and canvass the names of legal voters on the petition.

(2) The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed recall so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court. The elections officer may limit the number of observers to not fewer than two on each side, if in his or her opinion a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. If the elections officer finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature.

(3) Where the recall of a statewide elected official is sought, the secretary of state may use any statistical sampling techniques for verification and canvassing which have been adopted by rule for canvassing initiative petitions under RCW 29.79.200. No petition will be rejected on the basis of any statistical method employed. No petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains less than the

number of signatures of legal voters required by Article I, section 33 (Amendment 8) of the state Constitution.

Sec. 1417. RCW 29.82.100 and 1984 c 170 s 8 are each reenacted to read as follows:

FIXING DATE FOR RECALL ELECTION—NOTICE. If, at the conclusion of the verification and canvass, it is found that a petition for recall bears the required number of signatures of certified legal voters, the officer with whom the petition is filed shall promptly certify the petitions as sufficient and fix a date for the special election to determine whether or not the officer charged shall be recalled and discharged from office. The special election shall be held not less than forty-five nor more than sixty days from the certification and, whenever possible, on one of the dates provided in RCW 29.13.020, but no recall election may be held between the date of the primary and the date of the general election in any calendar year. Notice shall be given in the manner as required by law for special elections in the state or in the political subdivision, as the case may be.

Sec. 1418. RCW 29.82.105 and 1984 c 170 s 9 are each reenacted to read as follows:

RESPONSE TO PETITION CHARGES. When a date for a special recall election is set the certifying officer shall serve a notice of the date of the election to the officer whose recall is demanded and the person demanding recall. The manner of service shall be the same as for the commencement of a civil action in superior court. After having been served a notice of the date of the election and the ballot synopsis, the officer whose recall is demanded may submit to the certifying officer a response, not to exceed two hundred fifty words in length, to the charge contained in the ballot synopsis. Such response shall be submitted by the seventh consecutive day after service of the notice. The certifying officer shall promptly send a copy of the response to the person who filed the petition.

Sec. 1419. RCW 29.82.110 and 1965 c 9 s 29.82.110 are each amended to read as follows:

DESTRUCTION OF INSUFFICIENT RECALL PETITION. If it is found that the recall petition does not contain the requisite number of signatures of certified legal voters, the officer shall so notify the persons filing the petition, and at the expiration of thirty days from the conclusion of the count ~~((he))~~ the officer shall destroy the petitions unless prevented therefrom by the injunction or mandate of a court.

Sec. 1420. RCW 29.82.120 and 1965 c 9 s 29.82.120 are each amended to read as follows:

FRAUDULENT NAMES—RECORD OF. The officer making the canvass of a recall petition shall keep a record of all names appearing ~~((thereon which))~~ on it that are not certified to be legal voters of the state or of the political subdivision, as the case may be, and of all names appearing more than once ~~((thereon))~~, and ~~((he))~~ shall report the same to the prosecuting attorneys of the respective counties where ~~((such))~~ the names appear to have been signed, to the end that prosecutions may be had for ~~((such))~~ the violation of this chapter.

Sec. 1421. RCW 29.82.130 and 1990 c 59 s 71 are each reenacted to read as follows:

CONDUCT OF ELECTION—CONTENTS OF BALLOT. The special election for the recall of an officer shall be conducted in the same manner as a special election for that jurisdiction. The county auditor shall conduct the recall election. The ballots at any recall election shall contain a full, true, and correct copy of the ballot synopsis of the charge and the officer's response to the charge if one has been filed.

Sec. 1422. RCW 29.82.140 and 1977 ex.s. c 361 s 109 are each amended to read as follows:

ASCERTAINING THE RESULT—WHEN RECALL EFFECTIVE. The votes on a recall election (~~(shall)~~) must be counted, canvassed, and the results certified in the manner provided by law for counting, canvassing, and certifying the results of an election for the office from which the officer is being recalled(~~(= PROVIDED, That)~~). However, if the officer whose recall is demanded is the officer to whom, under the law, returns of elections are made, (~~(such)~~) the returns (~~(shall)~~) must be made to the officer with whom the charge is filed, and who called the special election(~~(; and)~~). In the case of an election for the recall of a state officer, the county canvassing boards of the various counties shall canvass and return the result of (~~(such)~~) the election to the officer calling (~~(such)~~) the special election. If a majority of all votes cast at the recall election is for the recall of the officer charged, (~~(he shall)~~) the officer is thereupon (~~(be)~~) recalled and discharged from (~~(his)~~) the office, and the office (~~(shall)~~) thereupon (~~(become and be)~~) is vacant.

Sec. 1423. RCW 29.82.160 and 1988 c 202 s 30 are each reenacted to read as follows:

ENFORCEMENT PROVISIONS—MANDAMUS—APPELLATE REVIEW. The superior court of the county in which the officer subject to recall resides has original jurisdiction to compel the performance of any act required of any public officer or to prevent the performance by any such officer of any act in relation to the recall not in compliance with law.

The supreme court has like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts. Any proceeding to compel or prevent the performance of any such act shall be begun within ten days from the time the cause of complaint arises, and shall be considered an emergency matter of public concern and take precedence over other cases, and be speedily heard and determined. Appellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case and shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court.

Subpart 14.3 Presidential Electors

Sec. 1424. RCW 29.71.010 and 1965 c 9 s 29.71.010 are each amended to read as follows:

DATE OF ELECTION—NUMBER. On the Tuesday (~~(next)~~) after the first Monday of November in the year in which a president of the United States is to be elected, there shall be elected as many electors of president and vice president

of the United States as there are senators and representatives in Congress allotted to this state.

Sec. 1425. RCW 29.71.020 and 1990 c 59 s 69 are each reenacted to read as follows:

NOMINATION—PLEDGE BY ELECTORS—WHAT NAMES ON BALLOTS—HOW COUNTED. In the year in which a presidential election is held, each major political party and each minor political party or independent candidate convention held under chapter 29.24 RCW that nominates candidates for president and vice president of the United States shall nominate presidential electors for this state. The party or convention shall file with the secretary of state a certificate signed by the presiding officer of the convention at which the presidential electors were chosen, listing the names and addresses of the presidential electors. Each presidential elector shall execute and file with the secretary of state a pledge that, as an elector, he or she will vote for the candidates nominated by that party. The names of presidential electors shall not appear on the ballots. The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of that political party.

Sec. 1426. RCW 29.71.030 and 1965 c 9 s 29.71.030 are each amended to read as follows:

CANVASSING THE RETURNS. The votes for candidates for president and vice president (~~((shall be given, received, returned and))~~) must be canvassed (~~((as the same are given, returned, and canvassed for candidates for congress))~~) under chapter 29.62 RCW (as recodified by this act). The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state (~~((to the same. Such lists shall)).~~) The lists must be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting.

Sec. 1427. RCW 29.71.040 and 1977 ex.s. c 238 s 2 are each amended to read as follows:

MEETING—TIME—PROCEDURE—VOTING FOR NOMINEE OF OTHER PARTY, PENALTY. The electors of the president and vice president shall convene at the seat of government on the day fixed by federal statute, at the hour of twelve o'clock noon of that day. If there is any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill it by (~~((viva voce))~~) voice vote, and plurality of votes. When all of the electors have appeared and the vacancies have been filled they shall constitute the college of electors of the state of Washington, and shall proceed to perform the duties required of them by the Constitution and laws of the United States. Any elector who votes for a person or persons not nominated by the party of which he or she is an elector (~~((shall be))~~) is subject to a civil penalty of up to (~~((a fine of))~~) one thousand dollars.

Sec. 1428. RCW 29.71.050 and 1965 c 9 s 29.71.050 are each amended to read as follows:

COMPENSATION. Every presidential elector who attends at the time and place appointed, and gives his or her vote for president and vice president, (~~((shall be))~~) is entitled to receive from this state, five dollars for each day's attendance at the meeting of the college of electors, and ten cents per mile for

travel by the usually traveled route in going to and returning from the place where the electors meet.

Sec. 1429. RCW 29.27.140 and 2001 c 30 s 1 are each reenacted to read as follows:

SLATE OF PRESIDENTIAL ELECTORS. In a year in which the president and vice president of the United States are to be elected, the secretary of state shall include in the certification prepared under RCW 29.27.050 the names of all candidates for president and vice president who, at least fifty days before the general election, have certified a slate of electors to the secretary of state under RCW 29.71.020 and have been nominated either (1) by a major political party, as certified by the appropriate authority under party rules, or (2) by a minor party or as independent candidates under chapter 29.24 RCW. Major or minor political parties or independent presidential candidates may substitute a different candidate for vice president for the one whose name appears on the party's certification or nominating petition at any time before forty-five days before the general election, by certifying the change to the secretary of state. Substitutions must not be permitted to delay the printing of either ballots or a voters' pamphlet. Substitutions are valid only if submitted under oath and signed by the same individual who originally certified the nomination, or his or her documented successor, and only if the substitute candidate consents in writing.

Subpart 14.4 Constitutional Amendment Conventions

Sec. 1430. RCW 29.74.010 and 1965 c 9 s 29.74.010 are each amended to read as follows:

GOVERNOR'S PROCLAMATION CALLING CONVENTION—WHEN. Within thirty days after the state is officially notified that the Congress of the United States has submitted to the several states a proposed amendment to the Constitution of the United States to be ratified or rejected by a convention, the governor shall issue a proclamation fixing the time and place for holding the convention and fixing the time for holding an election to elect delegates to the convention.

Sec. 1431. RCW 29.74.020 and 1965 c 9 s 29.74.020 are each reenacted to read as follows:

GOVERNOR'S PROCLAMATION—PUBLICATION. The proclamation shall be published once each week for two successive weeks in one newspaper published and of general circulation in each of the congressional districts of the state. The first publication of the proclamation shall be within thirty days of the receipt of official notice by the state of the submission of the amendment.

Sec. 1432. RCW 29.74.030 and 1965 c 9 s 29.74.030 are each amended to read as follows:

ELECTION OF CONVENTION DELEGATES—DATE FOR, HOW FIXED. The date for holding the election of delegates ~~((shall))~~ must be not less than one month nor more than six weeks ~~((prior to))~~ before the date of holding the convention ~~((:—PROVIDED, That)).~~ If a general ~~((state))~~ election is to be held not more than six months nor less than three months from the date of official notice of submission to the state of the proposed amendment, the

governor must fix the date of the general election as the date for the election of delegates to the convention.

Sec. 1433. RCW 29.74.040 and 1965 c 9 s 29.74.040 are each reenacted to read as follows:

TIME AND PLACE FOR HOLDING CONVENTION. The convention shall be held not less than five nor more than eight months from the date of the first publication of the proclamation provided for in RCW 29.74.020. It shall be held in the chambers of the state house of representatives unless the governor shall select some other place at the state capitol.

Sec. 1434. RCW 29.74.050 and 1965 c 9 s 29.74.050 are each reenacted to read as follows:

DELEGATES—NUMBER AND QUALIFICATIONS. Each state representative district shall be entitled to as many delegates in the convention as it has members in the house of representatives of the state legislature. No person shall be qualified to act as a delegate in said convention who does not possess the qualifications required of representatives in the state legislature from the same district.

Sec. 1435. RCW 29.74.060 and 1965 c 9 s 29.74.060 are each amended to read as follows:

DELEGATES—DECLARATIONS OF CANDIDACY. Anyone desiring to file as a candidate for election as a delegate to ~~((said))~~ the convention shall, not less than thirty nor more than sixty days ~~((prior to))~~ before the date fixed for holding the election, file ~~((his))~~ a declaration of candidacy with the secretary of state. Filing ~~((shall))~~ must be made on a form to be prescribed by the secretary of state and ~~((shall))~~ include a sworn statement of the candidate ~~((that he is))~~ as being either for or against ~~((, as the case may be,))~~ the amendment ~~((which))~~ that will be submitted to a vote of the convention and that ~~((he))~~ the candidate will, if elected as a delegate, vote in accordance with ~~((his))~~ the declaration. The form ~~((shall))~~ must be so worded that the candidate must give a plain unequivocal statement of his or her views as either for or against the proposal upon which he or she will, if elected, be called upon to vote. No candidate ~~((shall))~~ may in any such filing make any statement or declaration as to ~~((his))~~ party politics or political faith or beliefs. The fee for filing as a candidate ~~((shall be))~~ is ten dollars and ~~((shall))~~ must be transmitted to the secretary of state with the filing papers and be by the secretary of state transmitted to the state treasurer for the use of the general fund.

Sec. 1436. RCW 29.74.070 and 1965 c 9 s 29.74.070 are each amended to read as follows:

ELECTION OF CONVENTION DELEGATES—GENERAL PROCEDURE. The election of delegates to ~~((such))~~ the convention ~~((shall))~~ must as far as practicable, be ~~((called, held and conducted))~~ administered, except as otherwise provided in this chapter ~~((provided)),~~ in the same manner as a general election under the election laws of this state.

Sec. 1437. RCW 29.74.080 and 1990 c 59 s 70 are each reenacted to read as follows:

ELECTION OF CONVENTION DELEGATES—BALLOTS. The issue shall be identified as, "Delegates to a convention for ratification or rejection of a proposed amendment to the United States Constitution, relating"

(stating briefly the substance of amendment proposed for adoption or rejection)." The names of all candidates who have filed in a district shall be printed on the ballots for that district in two separate groups under the headings, "For the amendment" and "Against the amendment." The names of the candidates in each group shall be printed in alphabetical order.

Sec. I438. RCW 29.74.100 and 1965 c 9 s 29.74.100 are each amended to read as follows:

ELECTION OF CONVENTION DELEGATES—ASCERTAINING ELECTION RESULT. The election officials shall count and determine the number of votes cast for each individual; and shall also count and determine the aggregate number of votes cast for all candidates whose names appear under each of the respective headings. Where more than the required number have been voted for, the ballot (~~(shall)~~) must be rejected. The figures determined by the various counts (~~(shall)~~) must be entered in the poll books of the respective precincts. The vote (~~(shall)~~) must be canvassed in each county by the county canvassing board, and certificate of results (~~(shall)~~) must within (~~(twelve)~~) fifteen days after the election be transmitted to the secretary of state. Upon receiving (~~(such)~~) the certificate, the secretary of state (~~(shall have power to)~~) may require returns or poll books from any county precinct to be forwarded for (~~(his)~~) the secretary's examination.

Where a district embraces precincts of more than one county, the secretary of state shall combine the votes from all the precincts included in each district. The delegates elected in each district (~~(shall)~~) will be the number of candidates(~~(;)~~) corresponding to the number of state representatives from the district, who receive the highest number of votes in the group (either "for" or "against")(~~(;—which)~~) that received an aggregate number of votes for all candidates in the group greater than the aggregate number of votes for all the candidates in the other group(~~(;—and)~~). The secretary of state shall issue certificates of election(~~(;)~~) to the delegates so elected.

Sec. I439. RCW 29.74.110 and 1965 c 9 s 29.74.110 are each amended to read as follows:

MEETING—ORGANIZATION. The convention shall meet at the time and place fixed in the governor's proclamation. (~~(It shall be called to order by)~~) The secretary of state shall call it to order, who shall then call the roll of the delegates and preside over the convention until its president is elected. The chief justice of the supreme court shall administer the oath of office (~~(shall then be administered)~~) to the delegates (~~(by the chief justice of the supreme court)~~). As far as practicable, the convention shall proceed under the rules adopted by the last preceding session of the state senate. The convention shall elect a president and a secretary and shall thereafter and thereupon proceed (~~(to)~~) with a publicly recorded voice vote (~~(viva voce)~~) upon the proposition submitted by the Congress of the United States.

Sec. 1440. RCW 29.74.120 and 1965 c 9 s 29.74.120 are each reenacted to read as follows:

QUORUM—PROCEEDINGS—RECORD. Two-thirds of the elected members of said convention shall constitute a quorum to do business, and a majority of those elected shall be sufficient to adopt or reject any proposition coming before the convention. If such majority votes in favor of the ratification

of the amendment submitted to the convention, the said amendment shall be deemed ratified by the state of Washington; and if a majority votes in favor of rejecting or not ratifying the amendment, the same shall be deemed rejected by the state of Washington.

Sec. 1441. RCW 29.74.130 and 1965 c 9 s 29.74.130 are each amended to read as follows:

CERTIFICATION AND TRANSMITTAL OF RESULT. The vote of each member shall be recorded in the journal of the convention, which shall be preserved by the secretary of state as a public document. The action of the convention shall be enrolled, signed by its president and secretary and filed with the secretary of state and it shall be the duty of the secretary of state to properly certify the action of the convention to the Congress of the United States as provided by general law.

Sec. 1442. RCW 29.74.140 and 1965 c 9 s 29.74.140 are each reenacted to read as follows:

EXPENSES—HOW PAID—DELEGATES RECEIVE FILING FEE. The delegates attending the convention shall be paid the amount of their filing fee, upon vouchers approved by the president and secretary of the convention and state warrants issued thereon and payable from the general fund of the state treasury. The delegates shall receive no other compensation or mileage. All other necessary expenses of the convention shall be payable from the general fund of the state upon vouchers approved by the president and secretary of the convention.

Sec. 1443. RCW 29.74.150 and 1965 c 9 s 29.74.150 are each reenacted to read as follows:

FEDERAL STATUTES CONTROLLING. If a congressional measure, which submits to the several states an amendment to the Constitution of the United States for ratification or rejection, provides for or requires a different method of calling and holding conventions to ratify or reject said amendment, the requirements of said congressional measure shall be followed so far as they conflict with the provisions of this chapter.

PART 15 CANVASSING

Sec. 1501. RCW 29.13.040 and 1965 c 123 s 4 are each amended to read as follows:

CONDUCT OF ELECTIONS—CANVASS. All elections, whether special or general, held under RCW 29.13.010 and 29.13.020 (~~as now or hereafter amended, shall~~) must be conducted by the county auditor as ex officio county supervisor of elections and, except as provided in RCW 29.62.100, the returns (~~thereof shall be~~) canvassed by the county canvassing board.

Sec. 1502. RCW 29.62.180 and 1999 c 157 s 3 are each reenacted to read as follows:

WRITE-IN VOTING—DECLARATION OF CANDIDACY—COUNTING OF VOTE. (1) For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29.04.180 and

such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29.04.180 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent.

(2) The number of write-in votes cast for each office must be recorded and reported with the canvass for the election.

(3) Write-in votes cast for an individual candidate for an office need not be tallied if the total number of write-in votes cast for the office is not greater than the number of votes cast for the candidate apparently nominated or elected, and the write-in votes could not have altered the outcome of the primary or election. In the case of write-in votes for statewide office or for any office whose jurisdiction encompasses more than one county, write-in votes for an individual candidate must be tallied whenever the county auditor is notified by either the office of the secretary of state or another auditor in a multicounty jurisdiction that it appears that the write-in votes could alter the outcome of the primary or election.

(4) In the case of statewide offices or jurisdictions that encompass more than one county, if the total number of write-in votes cast for an office within a county is greater than the number of votes cast for a candidate apparently nominated or elected in a primary or election, the auditor shall tally all write-in votes for individual candidates for that office and notify the office of the secretary of state and the auditors of the other counties within the jurisdiction, that the write-in votes for individual candidates should be tallied.

Sec. 1503. RCW 29.54.042 and 1990 c 59 s 58 are each reenacted to read as follows:

TABULATION CONTINUOUS. Except as provided by rule under RCW 29.04.210, on the day of the primary or election, the tabulation of ballots at the polling place or at the counting center shall proceed without interruption or adjournment until all of the ballots cast at the polls at that primary or election have been tabulated.

Sec. 1504. RCW 29.54.050 and 1999 c 158 s 13 and 1999 c 157 s 4 are each reenacted to read as follows:

REJECTION OF BALLOTS OR PARTS—WRITE-IN VOTES. A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot or it is marked so as to identify the voter.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW 29.62.180; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the election board or the canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote.

Sec. 1505. RCW 29.54.060 and 1990 c 59 s 57 are each reenacted to read as follows:

QUESTIONS ON LEGALITY OF BALLOT—PRESERVATION AND RETURN. Whenever the precinct election officers or the counting center personnel have a question about the validity of a ballot or the votes for an office or issue that they are unable to resolve, they shall prepare and sign a concise record of the facts in question or dispute. These ballots shall be delivered to the canvassing board for processing. All ballots shall be preserved in the same manner as valid ballots for that primary or election.

Sec. 1506. RCW 29.54.097 and 1999 c 158 s 12 are each reenacted to read as follows:

POLL-SITE BALLOT COUNTING DEVICES—RESULTS. After the close of the polls, counties employing poll-site ballot counting devices may telephonically or electronically transmit the accumulated tally for each device to a central reporting location. Before making a telephonic or electronic transmission the precinct election officer must create a printed record of the results of the election for that poll site. During the canvassing period the results transmitted telephonically or electronically must be considered unofficial until a complete reconciliation of the results has been performed. This reconciliation may be accomplished by a direct loading of the results from the memory pack into the central accumulator, or a comparison of the report produced at the poll site on election night with the results received by the central accumulating device.

Sec. 1507. RCW 29.54.105 and 1990 c 59 s 60 are each reenacted to read as follows:

RETURNS, PRECINCT AND CUMULATIVE—DELIVERY TO CANVASSING BOARD. The county auditor shall produce cumulative and precinct returns for each primary and election and deliver them to the canvassing board for verification and certification. The precinct and cumulative returns of any primary or election are public records under chapter 42.17 RCW.

Sec. 1508. RCW 29.54.121 and 1990 c 59 s 24 are each reenacted to read as follows:

SEALING OF VOTING DEVICES—EXCEPTIONS. Except for reopening to make a recanvass, the registering mechanism of each mechanical voting device used in any primary or election shall remain sealed until ten days after the completion of the canvass of that primary or election in that county. Except where provided by a rule adopted under RCW 29.04.210, voting devices used in a primary or election shall remain sealed until ten days after the completion of the canvass of that primary or election in that county.

Sec. 1509. RCW 29.54.170 and 1990 c 59 s 61 are each reenacted to read as follows:

VOTING SYSTEMS—MAINTENANCE OF DOCUMENTS. In counties using voting systems, the county auditor shall maintain the following documents for at least sixty days after the primary or election:

- (1) Sample ballot formats together with a record of the format or formats assigned to each precinct;
- (2) All programming material related to the control of the vote tallying system for that primary or election; and
- (3) All test materials used to verify the accuracy of the tabulating equipment as required by RCW 29.33.350.

Sec. 1510. RCW 29.51.175 and 1990 c 59 s 46 are each reenacted to read as follows:

VOTES BY STICKERS, PRINTED LABELS, REJECTED. Votes cast by stickers or printed labels are not valid for any purpose and shall be rejected. Votes cast by sticker or label shall not affect the validity of other offices or issues on the voter's ballot.

Sec. 1511. RCW 29.54.075 and 1999 c 158 s 14 are each amended to read as follows:

BALLOT CONTAINERS, SEALING, OPENING. Immediately after their tabulation, all ballots counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days or according to federal law, whichever is longer. All ballots tallied by poll-site ballot counting devices must be returned to the elections department in sealed ballot containers on election day. Counties composed entirely of islands or portions of counties composed of islands shall collect the ballots within twenty-four hours of the close of the polls.

Ballots tabulated in poll-site ballot counting devices must be sealed by two of the election precinct officers at the polling place, and a log of the seal and the names of the people sealing the container must be completed. One copy of this log must be retained by the inspector, one copy must be placed in the ballot transfer case, and one copy must be transported with the ballots to the elections department, where the seal number must be verified by the county auditor or a designated representative. Ballots may be transported by one election employee if the container is sealed at the poll and then verified when returned to the elections department. Auditors using poll-site ballot counting devices may conduct early pickup of counted ballots on election day.

In the presence of major party observers who are available, ballots may be removed from the sealed containers at the elections department and consolidated into one sealed container for storage purposes. The containers may only be opened by the canvassing board as part of the canvass, or to conduct recounts, or under RCW 29.54.025(3), or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record ~~((shall))~~ must be added to any other record of the canvassing process in that county.

Sec. 1512. RCW 29.54.085 and 1999 c 158 s 15 are each amended to read as follows:

COUNTING BALLOTS—OFFICIAL RETURNS. (1) The ballots picked up from the precincts during the polling hours may be counted only at the counting center before the polls have closed. Election returns from the count of these ballots must be held in secrecy until the polls have been closed ~~((as provided by RCW 29.54.018))~~.

(2) Upon breaking the seals and opening the ballot containers from the precincts, all voted ballots ~~((shall))~~ must be manually inspected for damage, write-in votes, and incorrect or incomplete marks. If it is found that any ballot is damaged so that it cannot properly be counted by the vote tallying system, a true duplicate copy ~~((shall))~~ must be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All damaged ballots ~~((shall))~~

must be kept by the county auditor until sixty days after the primary or election or according to federal law, whichever is longer.

(3) The returns produced by the vote tallying system, to which have been added the counts of questioned ballots, write-in votes, and absentee votes, constitute the official returns of the primary or election in that county.

Sec. 1513. RCW 29.27.120 and 1965 c 9 s 29.27.120 are each reenacted to read as follows:

CERTIFICATE NOT WITHHELD FOR INFORMALITY IN RETURNS.

No certificate shall be withheld on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate, nor shall any commission be withheld by the governor on account of any defect or informality of any return made to the office of the secretary of state.

NEW SECTION. Sec. 1514. COUNTY CANVASSING BOARD—MEMBERSHIP—AUTHORITY—DELEGATION OF AUTHORITY—RULE MAKING. (1) Members of the county canvassing board are the county auditor, who is the chair, the county prosecuting attorney, and the chair of the county legislative body. If a member of the board is not available to carry out the duties of the board, then the auditor may designate a deputy auditor, the prosecutor may designate a deputy prosecuting attorney, and the chair of the county legislative body may designate another member of the county legislative body. Any such designation may be made on an election-by-election basis or may be on a permanent basis until revoked by the designating authority. Any such designation must be in writing, and if for a specific election, must be filed with the county auditor not later than the day before the first day duties are to be undertaken by the canvassing board. If the designation is permanent until revoked by the designating authority, then the designation must be on file in the county auditor's office no later than the day before the first day the designee is to undertake the duties of the canvassing board.

(2) The county canvassing board may adopt rules that delegate in writing to the county auditor or the county auditor's staff the performance of any task assigned by law to the canvassing board.

(3) The county canvassing board may not delegate the responsibility of certifying the returns of a primary or election, of determining the validity of challenged ballots, or of determining the validity of provisional ballots referred to the board by the county auditor.

(4) The county canvassing board shall adopt administrative rules to facilitate and govern the canvassing process in that jurisdiction.

(5) Meetings of the county canvassing board are public meetings under chapter 42.30 RCW. All rules adopted by the county canvassing board must be adopted in a public meeting under chapter 42.30 RCW, and once adopted must be available to the public to review and copy under chapter 42.17 RCW.

Sec. 1515. RCW 29.62.030 and 1995 c 139 s 3 are each amended to read as follows:

PROCEDURE WHEN MEMBER A CANDIDATE. The members of the county canvassing board may not include individuals who are candidates for an office to be voted upon at the primary or election. If no individual is available to serve on the canvassing board who is not a candidate at the primary or election

~~((is one at which a member, or the officer designating a member, of the canvassing board is a candidate for an office,))~~ the individual who is a candidate must not make decisions regarding the determination of a voter's intent with respect to a vote cast for that specific office ~~((shall))~~; the decision must be made by the other two members of the board ~~((not designated by that officer))~~. If the two disagree, the vote ~~((shall))~~ must not be counted unless the number of those votes could affect the result of the primary or election, in which case the secretary of state or a designee shall make the decision on those votes. This section does not restrict participation in decisions as to the acceptance or rejection of entire ballots, unless the office in question is the only one for which the voter cast a vote.

Sec. 1516. RCW 29.62.020 and 1999 c 259 s 4 are each amended to read as follows:

COUNTY CANVASSING BOARD—PROCEDURE FOR ABSENTEE BALLOTS. ~~((H))~~ At least every third day after a ~~((special election,))~~ primary~~((;))~~ or ~~((general))~~ election and before certification of the election results, except Sundays and legal holidays, the county auditor, as delegated by the county canvassing board, shall ~~((convene the county canvassing board or their designees to))~~ process absentee ballots and canvass the votes cast at that ~~((special election,))~~ primary~~((;))~~ or ~~((general))~~ election, if the county auditor is in possession of more than twenty-five ballots that have yet to be canvassed. The county auditor, as delegated by the county canvassing board, may use his or her discretion in determining when to ~~((convene the canvassing board or their designees))~~ process the remaining absentee ballots and canvass the votes during the final four days before the certification of election results in order to protect the secrecy of any ballot. In counties where this process has not been delegated to the county auditor, the county auditor shall convene the county canvassing board to process absentee ballots and canvass the votes cast at the primary or election as set forth in this section.

Each absentee ballot previously not canvassed that was received by the county auditor two days or more before ~~((the convening of the canvassing board or their designees and))~~ processing absentee ballots and canvassing the votes as delegated by or processed by the county canvassing board, that either was received by the county auditor before the closing of the polls on the day of the ~~((special election,))~~ primary~~((;))~~ or ~~((general))~~ election for which it was issued, or that bears a ~~((date of mailing))~~ postmark on or before the ~~((special election,))~~ primary~~((;))~~ or ~~((general))~~ election for which it was issued, must be processed at that time. The tabulation of votes that results from that day's canvass must be made available to the general public immediately upon completion of the canvass.

~~((2))~~ On the tenth day after a special election or a primary and on the fifteenth day after a general election, the canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a date of mailing on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, shall be included in the canvass report.

~~(3)~~ At the request of any caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or

elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house:))

Sec. 1517. RCW 29.54.025 and 1999 c 158 s 9 are each amended to read as follows:

COUNTING CENTER, DIRECTION AND OBSERVATION OF PROCEEDINGS—MANUAL COUNT OF CERTAIN PRECINCTS. (1) The counting center in a county using voting systems ~~((shall be))~~ is under the direction of the county auditor and ~~((shall))~~ must be observed by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings ~~((shall))~~ must be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

(2) In counties in which ballots are not counted at the polling place, the official political party observers, upon mutual agreement, may request that a precinct be selected at random on receipt of the ballots from the polling place and that a manual count be made of the number of ballots and of the votes cast on any office or issue. The ballots for that precinct ~~((shall))~~ must then be counted by the vote tallying system, and this result ~~((shall))~~ will be compared to the results of the manual count. This may be done as many as three times during the tabulation of ballots on the day of the primary or election.

(3) In counties using poll-site ballot counting devices, the political party observers, upon mutual agreement, may choose as many as three precincts and request that a manual count be made of the number of ballots and the votes cast on any office or issue. The results of this count will be compared to the count of the precinct made by the poll-site ballot counting device. These selections must be made no later than thirty minutes after the close of the polls. The manual count must be completed within forty-eight hours after the close of the polls. The process must take place at a location designated by the county auditor for that purpose. The political party observers must receive timely notice of the time and location, and have the right to be present. However, the process must proceed as scheduled if the observers are unable to attend.

Sec. 1518. RCW 29.36.330 and 2001 c 241 s 12 are each reenacted to read as follows:

CREDIT FOR VOTING—RETENTION OF BALLOTS. Each registered voter casting an absentee ballot will be credited with voting on his or her voter registration record. Absentee ballots must be retained for the same length of time and in the same manner as ballots cast at the precinct polling places.

NEW SECTION. Sec. 1519. CERTIFICATION OF ELECTION RESULTS—UNOFFICIAL RETURNS. (1) On the tenth day after a special election or primary and on the fifteenth day after a general election, the county canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a postmark on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house or representatives.

Sec. 1520. RCW 29.62.040 and 1990 c 59 s 63 are each amended to read as follows:

COUNTY CANVASSING BOARD—CANVASSING PROCEDURE—PENALTY. Before canvassing the returns of a primary or election, the ~~((chairman))~~ chair of the county legislative authority or the chair's designee shall administer an oath to the county auditor or the auditor's designee attesting to the authenticity of the information presented to the canvassing board. This oath must be signed by the county auditor or designee and filed with the returns of the primary or election.

The county canvassing board shall proceed to verify the results from the precincts and the absentee ballots. The board shall execute a certificate of the results of the primary or election signed by all members of the board or their designees. Failure to certify the returns, if they can be ascertained with reasonable certainty, is a ~~((misdemeanor))~~ crime under RCW 29.85.170.

Sec. 1521. RCW 29.62.050 and 1990 c 59 s 64 are each amended to read as follows:

RECANVASS—GENERALLY. Whenever the canvassing board finds that there is an apparent discrepancy or an inconsistency in the returns of a primary or election, the board may recanvass the ballots or voting devices in any precincts of the county. The canvassing board shall conduct any necessary recanvass activity on or before the last day to certify the primary or election and correct any error and document the correction of any error that it finds.

Sec. 1522. RCW 29.62.080 and 1965 c 9 s 29.62.080 are each amended to read as follows:

TIE VOTES IN PRIMARY OR FINAL ELECTION. (1) If the requisite number of any federal, state, county, city, or district offices have not been nominated in a primary by reason of two or more persons having an equal and requisite number of votes for being placed on the general election ballot, the official empowered by state law to certify candidates for the general election ballot shall give notice to the several persons so having the equal and requisite number of votes to attend at the appropriate office at the time designated by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared nominated and placed on the general election ballot.

(2) If the requisite number of any federal, state, county, city, district, or precinct officers ~~((shall not be))~~ have not been elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the official empowered by state law to issue the original certificate of election shall give notice to the several persons so having the highest and equal number of votes to attend at the appropriate office at the time to be appointed by ~~((said))~~ that official, who shall then and there proceed publicly to decide by lot which of ~~((the))~~ those persons ~~((so having an equal number of votes shall))~~ will be declared duly elected, and the ~~((said))~~ official shall make out and deliver to

the person thus duly declared elected a certificate of ((his)) election ((as hereinbefore provided)).

Sec. 1523. RCW 29.62.090 and 2001 c 225 s 2 are each amended to read as follows:

ABSTRACT BY ELECTION OFFICER—TRANSMITTAL TO SECRETARY OF STATE. (1) Immediately after the official results of a state primary or general election in a county are ascertained, the county auditor or other election officer shall make an abstract of the number of registered voters in each precinct and of all the votes cast in the county at such state primary or general election for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The ~~((abstract must be entered on blanks furnished by the secretary of state or on compatible computer printouts approved by the secretary of state, and the))~~ cumulative report of the election and a copy of the certificate of the election must be transmitted to the secretary of state immediately, through electronic means and mailed with the abstract of votes no later than the next business day following the certification by the county canvassing board.

(2) After each general election, the county auditor or other election officer shall provide to the secretary of state a report of the number of absentee ballots cast in each precinct for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The report may be included in the abstract required by this section or may be transmitted to the secretary of state separately, but in no event later than March 31st of the year following the election. Absentee ballot results may be incorporated into votes cast at the polls for each precinct or may be reported separately on a precinct-by-precinct basis.

(3) If absentee ballot results are not incorporated into votes cast at the polls, the county auditor or other election official may aggregate results from more than one precinct if the auditor, pursuant to rules adopted by the secretary of state, finds that reporting a single precinct's absentee ballot results would jeopardize the secrecy of a person's ballot. To the extent practicable, precincts for which absentee results are aggregated must be contiguous.

Sec. 1524. RCW 29.62.100 and 1977 ex.s. c 361 s 97 are each amended to read as follows:

SECRETARY OF STATE—PRIMARY RETURNS—STATE OFFICES, ETC. The secretary of state shall, as soon as possible but in any event not later than the third Tuesday following the primary, canvass and certify the returns of all primary elections as to candidates for state offices, United States senators and representatives in Congress, and all other candidates whose district extends beyond the limits of a single county.

Sec. 1525. RCW 29.62.120 and 1965 c 9 s 29.62.120 are each amended to read as follows:

SECRETARY OF STATE TO CANVASS FINAL RETURNS—SCOPE. As soon as the returns have been received from all the counties of the state, but not later than the thirtieth day after the election, the secretary of state shall make a canvass of such of the returns as are not required to be canvassed by the

legislature and make out a statement thereof, file it in his or her office, and transmit a certified copy (~~thereof~~) to the governor.

Sec. 1526. RCW 29.62.130 and 1965 c 9 s 29.62.130 are each amended to read as follows:

CANVASS OF VOTE ON STATEWIDE MEASURES. The votes on proposed amendments to the state Constitution, recommendations for the calling of constitutional conventions and other questions submitted to the people (~~shall~~) must be counted, canvassed, and returned by (~~the regular precinct election officers and by the county auditors and~~) each county canvassing board(~~s~~) in the manner provided by law for counting, canvassing, and returning votes for candidates for state offices. (~~It shall be the duty of~~) The secretary of state shall, in the presence of the governor, within thirty days after (~~any such~~) the election, (~~to~~) canvass the votes upon each question and certify to the governor the result (~~thereof, and~~). The governor shall forthwith issue (~~his~~) a proclamation giving the whole number of votes cast in the state for and against such measure and declaring the result(~~: PROVIDED, That~~). If the vote cast upon an initiative or referendum measure is equal to less than one-third of the total vote cast at the election, the governor shall proclaim the measure to have failed (~~for that reason~~).

PART 16 RECOUNTS

Sec. 1601. RCW 29.64.010 and 2001 c 225 s 3 are each amended to read as follows:

APPLICATION FOR RECOUNT—REQUIREMENTS—APPLICATION OF CHAPTER. An officer of a political party or any person for whom votes were cast in a primary who was not declared nominated may file a written application for a recount of the votes or a portion of the votes cast at that primary for all persons for whom votes were cast for nomination to that office.

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office.

Any group of five or more registered voters may file a written application for a recount of the votes or a portion of the votes cast upon any question or issue. They shall designate one of the members of the group as (~~chairman~~) chair and shall indicate the voting residence of each member of the group.

An application for a recount of the votes cast for an office or on a ballot measure must be filed with the officer with whom filings are made for the jurisdiction.

An application for a recount must specify whether the recount will be done manually or by the vote tally system. A recount done by the vote tally system must use programming that recounts and reports only the office or ballot measure in question. The county shall also provide for a test of the logic and accuracy of that program.

An application for a recount (~~shall~~) must be filed within three business days after the county canvassing board or secretary of state has declared the official results of the primary or election for the office or issue for which the recount is requested.

This chapter applies to the recounting of votes cast by paper ballots and to the recounting of votes recorded on ballots counted by a vote tally system.

Sec. 1602. RCW 29.64.015 and 2001 c 225 s 4 are each reenacted to read as follows:

MANDATORY RECOUNT. (1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) If the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29.64.020, 29.64.030, and 29.64.040. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system.

Sec. 1603. RCW 29.64.020 and 2001 c 225 s 5 are each reenacted to read as follows:

DEPOSIT OF FEES—NOTICE—PUBLIC PROCEEDING. An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. If the application is for a machine recount, the deposit must be equal to fifteen

cents for each ballot. These charges shall be determined by the county canvassing board or boards under RCW 29.64.060.

The county canvassing board shall determine a time and a place or places at which the recount will be conducted. This time shall be less than three business days after the day upon which: The application was filed with the board; the request for a recount or directive ordering a recount was received by the board from the secretary of state; or the returns are certified which indicate that a recount is required under RCW 29.64.015 for an issue or office voted upon only within the county. Not less than two days before the date of the recount, the county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. The county auditor shall also notify the affected parties by either telephone, fax, e-mail, or other electronic means at the time of mailing. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received the notification. Each attempt to notify affected parties must request a return response indicating that the notice has been received. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount.

Sec. I604. RCW 29.64.030 and 2001 c 225 s 6 are each reenacted to read as follows:

RECOUNTING THE VOTES—OBSERVERS—REQUEST TO STOP. (1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process.

Sec. 1605. RCW 29.64.035 and 2001 c 225 s 7 are each reenacted to read as follows:

PARTIAL RECOUNT REQUIRING COMPLETE RECOUNT. When a partial recount of votes cast for an office or issue changes the result of the election, the canvassing board or the secretary of state, if the office or issue is being recounted at his or her direction, shall order a complete recount of all ballots cast for the office or issue for the jurisdiction in question.

This recount will be conducted in a manner consistent with RCW 29.64.015.

Sec. 1606. RCW 29.64.040 and 2001 c 225 s 8 are each reenacted to read as follows:

AMENDED ABSTRACTS. Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts must be transmitted to the same officers who received the abstract on which the recount was based.

If the nomination, election, or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board shall file the amended abstract with the original results of that election or primary.

If the nomination, election, or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results of that election. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election.

Sec. 1607. RCW 29.64.051 and 2001 c 225 s 9 are each reenacted to read as follows:

LIMITATION ON RECOUNTS. After the original count, canvass, and certification of results, the votes cast in any single precinct may not be recounted and the results recertified more than twice.

Sec. 1608. RCW 29.64.060 and 2001 c 225 s 10 are each reenacted to read as follows:

EXPENSES OF RECOUNT—CHARGES. The canvassing board shall determine the expenses for conducting a recount of votes.

The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the nomination or election for which the recount was ordered.

Sec. 1609. RCW 29.64.080 and 2001 c 225 s 11 are each reenacted to read as follows:

STATEWIDE MEASURES—MANDATORY RECOUNT—COST AT STATE EXPENSE. When the official canvass of returns of any election reveals that the difference in the number of votes cast for the approval of a statewide measure and the number of votes cast for the rejection of such measure is less than two thousand votes and also less than one-half of one percent of the total number of votes cast on such measure, the secretary of state shall direct that a recount of all votes cast on such measure be made on such measure, in the

manner provided by RCW 29.64.030 and 29.64.040, and the cost of such recount will be at state expense.

Sec. 1610. RCW 29.64.090 and 1977 ex.s. c 144 s 5 are each amended to read as follows:

STATEWIDE MEASURES—MANDATORY RECOUNT—FUNDS FOR ADDITIONAL EXPENSES. Each county auditor shall file with the secretary of state a statement listing only the additional expenses incurred whenever a mandatory recount of the votes cast on a state measure is made as provided in RCW 29.64.080. The secretary of state shall include in his or her biennial budget request a provision for sufficient funds to carry out the provisions of this section. Payments hereunder shall be from appropriations specifically provided for such purpose by law.

PART I7 CONTESTING AN ELECTION

Sec. 1701. RCW 29.04.030 and 1977 ex.s. c 36I s 3 are each reenacted to read as follows:

PREVENTION AND CORRECTION OF ELECTION FRAUDS AND ERRORS. Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or
- (2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or
- (3) The name of any person has been or is about to be wrongfully placed upon the ballots; or
- (4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or
- (5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or
- (6) An error or omission has occurred or is about to occur in the issuance of a certificate of election.

An affidavit of an elector under subsections (1) and (3) above when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the filing period for nominations for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector

under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the issuance of a certificate of election.

Sec. 1702. RCW 29.65.010 and 1983 1st ex.s. c 30 s 6 are each amended to read as follows:

COMMENCEMENT BY REGISTERED VOTER—CAUSES FOR. Any registered voter may contest the right of any person declared elected to an office to be issued a certificate of election for any of the following causes:

(1) For misconduct on the part of any member of any precinct election board involved therein;

(2) Because the person whose right is being contested was not at the time ~~((he))~~ the person was declared elected eligible to that office;

(3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, ~~((his))~~ the conviction not having been reversed nor ~~((his))~~ the person's civil rights restored after the conviction;

(4) Because the person whose right is being contested gave a bribe or reward to a voter or to an inspector or judge of election for the purpose of procuring ~~((his))~~ the election, or offered to do so;

(5) On account of illegal votes.

(a) Illegal votes include but are not limited to the following:

(i) More than one vote cast by a single voter;

(ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.

(b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged ~~((pursuant to))~~ under RCW 29.10.125 and 29.10.127.

All election contests ~~((shall))~~ must proceed under RCW 29.04.030.

Sec. 1703. RCW 29.65.020 and 1977 ex.s. c 361 s 102 are each amended to read as follows:

AFFIDAVIT OF ERROR OR OMISSION—TIME FOR FILING—CONTENTS—WITNESSES. An affidavit of an elector with respect to RCW 29.04.030(6) must be filed with the appropriate court no later than ten days following the issuance of a certificate of election and ~~((shall))~~ must set forth specifically:

(1) The name of the contestant and that he or she is a registered voter in the county, district or precinct, as the case may be, in which the office is to be exercised;

(2) The name of the person whose right is being contested;

(3) The office;

(4) The particular causes of the contest.

No statement of contest ~~((shall))~~ may be dismissed for want of form if the particular causes of contest are alleged with sufficient certainty. The person charged with the error or omission ~~((shall))~~ must be given the opportunity to call any witness, including the candidate to whom he or she has issued or intends to issue the certificate of election.

Sec. 1704. RCW 29.65.040 and 1977 ex.s. c 361 s 103 are each amended to read as follows:

HEARING DATE—ISSUANCE OF CITATION—SERVICE. Upon such affidavit being filed, ~~((it shall be the duty of))~~ the clerk ~~((to))~~ shall inform the judge of the appropriate court, who may give notice, and order a session of the court to be held at the usual place of holding ~~((said))~~ the court, on some day to be named by ~~((him))~~ the judge, not less than ten nor more than twenty days from the date of ~~((such))~~ the notice, to hear and determine such contested election ~~((= PROVIDED, That))~~. If no session ~~((be))~~ is called for the purpose, ~~((such))~~ the contest ~~((shall))~~ must be determined at the first regular session of court after ~~((such))~~ the statement is filed.

The clerk of the court shall also at the time issue a citation for the person charged with the error or omission, to appear at the time and place specified in the notice ~~((, which))~~. The citation ~~((shall))~~ must be delivered to the sheriff and be served upon the party in person; or if ~~((he))~~ the person cannot be found, by leaving a copy thereof at the house where ~~((be))~~ the person last resided.

Sec. 1705. RCW 29.65.050 and 1965 c 9 s 29.65.050 are each reenacted to read as follows:

WITNESSES TO ATTEND—HEARING OF CONTEST—JUDGMENT. The clerk shall issue subpoenas for witnesses in such contested election at the request of either party, which shall be served by the sheriff or constable, as other subpoenas, and the superior court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so.

The court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case.

If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected.

Sec. 1706. RCW 29.65.055 and 1977 ex.s. c 361 s 104 are each reenacted to read as follows:

COSTS, HOW AWARDED. If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election for costs, in favor of the party charged with error or omission.

If such election is annulled and set aside, judgment for costs shall be rendered against the party charged with the error or omission and in favor of the party alleging the same.

Sec. 1707. RCW 29.65.060 and 1965 c 9 s 29.65.060 are each amended to read as follows:

MISCONDUCT OF BOARD—IRREGULARITY MUST BE MATERIAL TO RESULT. No irregularity or improper conduct in the proceedings of any election board or any member ~~((thereof shall))~~ of the board amounts to such misconduct as to annul or set aside any election unless the irregularity or

improper conduct was such as to procure the person whose right to the office may be contested, to be declared duly elected although ~~((he))~~ the person did not receive the highest number of legal votes.

Sec. 1708. RCW 29.65.070 and 1965 c 9 s 29.65.070 are each reenacted to read as follows:

MISCONDUCT OF BOARD—NUMBER OF VOTES AFFECTED—ENOUGH TO CHANGE RESULT. When any election for an office exercised in and for a county is contested on account of any malconduct on the part of any election board, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts will change the result as to such office in the remaining vote of the county.

Sec. 1709. RCW 29.65.080 and 1965 c 9 s 29.65.080 are each amended to read as follows:

ILLEGAL VOTES—ALLEGATION OF IN STATEMENT OF CONTEST. When the reception of illegal votes is alleged as a cause of contest, it ~~((shall be))~~ is sufficient to state generally that illegal votes were cast, ~~((which))~~ that, if given to the person whose election is contested in the specified precinct or precincts, will, if taken from ~~((him))~~ that person, reduce the number of ~~((his))~~ the person's legal votes below the number of legal votes given to some other person for the same office.

Sec. 1710. RCW 29.65.090 and 1965 c 9 s 29.65.090 are each amended to read as follows:

ILLEGAL VOTES—LIST REQUIRED FOR TESTIMONY. No testimony ~~((shall))~~ may be received as to any illegal votes unless the party contesting the election delivers to the opposite party, at least three days before trial, a written list of the number of illegal votes and by whom given, ~~((which he))~~ that the contesting party intends to prove ~~((on such))~~ at the trial. No testimony ~~((shall))~~ may be received as to any illegal votes, except as to such as are specified in the list.

Sec. 1711. RCW 29.65.100 and 1965 c 9 s 29.65.100 are each amended to read as follows:

ILLEGAL VOTES—NUMBER OF VOTES AFFECTED—ENOUGH TO CHANGE RESULT. No election ~~((shall))~~ may be set aside on account of illegal votes, unless it appears that an amount of illegal votes has been given to the person whose right is being contested, ~~((which))~~ that, if taken from ~~((him))~~ that person, would reduce the number of ~~((his))~~ the person's legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes ~~((which))~~ that may be shown to have been given to ~~((such))~~ the other person.

Sec. 1712. RCW 29.65.120 and 1965 c 9 s 29.65.120 are each reenacted to read as follows:

NULLIFICATION OF ELECTION CERTIFICATE—WHEN EFFECTIVE. If an election is set aside by the judgment of the superior court and if no appeal is taken therefrom within ten days, the certificate issued shall be thereby rendered void.

PART 18
STATE INITIATIVE AND REFERENDUM

NEW SECTION. Sec. 1801. VOTER REGISTRATION INFORMATION. The cards required by RCW 29.07.090 must be kept on file in the office of the secretary of state in the manner that will be most convenient for, and for the sole purpose of, checking initiative and referendum petitions. The secretary may maintain an automated file of voter registration information for any county or counties in lieu of filing or maintaining these voter registration cards if the automated file includes all of the information from the cards including, but not limited to, a retrievable facsimile of the signature of each voter of that county or counties. The automated file may be used only for the purpose authorized for the use of the cards.

Sec. 1802. RCW 29.79.010 and 1982 c 116 s 1 are each amended to read as follows:

FILING PROPOSED MEASURES WITH SECRETARY OF STATE. If any legal voter of the state, either individually or on behalf of an organization, desires to petition the legislature to enact a proposed measure, or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the legislature be submitted to the people, he or she shall file with the secretary of state a ~~((typewritten))~~ legible copy of the measure proposed, or the act or part of such act on which a referendum is desired, accompanied by an affidavit that the ~~((proposer))~~ sponsor is a legal voter and a filing fee prescribed under RCW 43.07.120~~((, as now or hereafter amended))~~.

Sec. 1803. RCW 29.79.015 and 1982 c 116 s 2 are each amended to read as follows:

REVIEW OF INITIATIVE MEASURES BY CODE REVISER'S OFFICE—CERTIFICATE OF REVIEW REQUIRED FOR ASSIGNMENT OF SERIAL NUMBER. Upon receipt of ~~((any petition proposing an initiative to the people or an initiative to the legislature, and prior to))~~ a proposed initiative measure, and before giving it a serial number ~~((thereto))~~, the secretary of state shall submit a copy thereof to the office of the code reviser and give notice to the ~~((petitioner))~~ sponsor of such transmittal. Upon receipt of the measure, the assistant code reviser to whom it has been assigned may confer with the ~~((petitioner))~~ sponsor and shall within seven working days from its receipt ~~((thereof))~~, review the proposal ~~((for matters of form and style, and such matters of substantive import as may be agreeable to the petitioner, and shall))~~ and recommend to the ~~((petitioner))~~ sponsor such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the code reviser's office ~~((shall be))~~ are advisory only, and the ~~((petitioner))~~ sponsor may accept or reject them in whole or in part. The code reviser shall issue a certificate of review certifying that he or she has reviewed the measure ~~((for form and style))~~ and that ~~((the))~~ any recommendations ~~((thereon, if any,))~~ have been communicated to the ~~((petitioner, and such))~~ sponsor. The certificate ~~((shall issue))~~ must be issued whether or not the ~~((petitioner))~~ sponsor accepts such recommendations. Within fifteen working days after notification of submittal of the ~~((petition))~~ proposed measure to the code reviser's office, the ~~((petitioner))~~ sponsor, if he or she desires to proceed with ~~((his))~~ sponsorship,

shall file the measure together with the certificate of review with the secretary of state for assignment of a serial number, and the secretary of state shall ~~((thereupon))~~ then submit to the code reviser's office a certified copy of the measure filed. Upon ~~((submitting))~~ submission of the proposal to the secretary of state for assignment of a serial number, the secretary of state shall refuse to make such assignment unless the proposal is accompanied by a certificate of review.

Sec. 1804. RCW 29.79.020 and 1987 c 161 s 1 are each amended to read as follows:

TIME FOR FILING VARIOUS TYPES. Initiative measures proposed to be submitted to the people must be filed with the secretary of state within ten months prior to the election at which they are to be submitted, and the signature petitions ~~((therefor))~~ must be filed with the secretary of state not less than four months before the next general statewide election.

Initiative measures proposed to be submitted to the legislature must be filed with the secretary of state within ten months prior to the next regular session of the legislature at which they are to be submitted, and the signature petitions ~~((therefor))~~ must be filed with the secretary of state not less than ten days before such regular session of the legislature.

A referendum measure petition ordering that any act or part ~~((thereof))~~ of an act passed by the legislature be referred to the people must be filed with the secretary of state within ninety days after the final adjournment of the legislative session at which the act was passed. It may be submitted at the next general statewide election or at a special election ordered by the legislature.

A proposed initiative or referendum measure may be filed no earlier than the opening of the secretary of state's office for business pursuant to RCW 42.04.060 on the first day filings are permitted, and any initiative or referendum petition must be filed not later than the close of business on the last business day in the specified period for submission of signatures. If a filing deadline falls on a Saturday, the office of the secretary of state ~~((shall))~~ must be open ~~((on that Saturday))~~ for the transaction of business under this section from 8:00 a.m. to 5:00 p.m. on that Saturday.

Sec. 1805. RCW 29.79.030 and 1982 c 116 s 3 are each amended to read as follows:

NUMBERING—TRANSMITTAL TO ATTORNEY GENERAL. The secretary of state shall give a serial number to each initiative, referendum bill, or referendum measure, using a separate series for initiatives to the legislature, initiatives to the people, referendum bills, and referendum measures, and forthwith transmit one copy of the measure proposed bearing its serial number to the attorney general. Thereafter a measure shall be known and designated on all petitions, ballots, and proceedings as "Initiative Measure No. . . ." "Referendum Bill No. . . .," or "Referendum Measure No. . . .(“)."

Sec. 1806. RCW 29.79.035 and 2000 c 197 s 1 are each reenacted to read as follows:

BALLOT TITLE—FORMULATION, BALLOT DISPLAY. (1) The ballot title for an initiative to the people, an initiative to the legislature, a referendum bill, or a referendum measure consists of: (a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form

prescribed in this section for the ballot measure in question. The statement of the subject of a measure must be sufficiently broad to reflect the subject of the measure, sufficiently precise to give notice of the measure's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, be a true and impartial description of the measure's essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure.

(2) For an initiative to the people, or for an initiative to the legislature for which the legislature has not proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure No. . . . concerns (statement of subject). This measure would (concise description). Should this measure be enacted into law?

- Yes
- No

(3) For an initiative to the legislature for which the legislature has proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure Nos. . . . and . . .B concern (statement of subject).

Initiative Measure No. . . . would (concise description).

As an alternative, the legislature has proposed Initiative Measure No. . . .B, which would (concise description).

1. Should either of these measures be enacted into law?

- Yes
- No

2. Regardless of whether you voted yes or no above, if one of these measures is enacted, which one should it be?

- Measure No.
- or
- Measure No.

(4) For a referendum bill submitted to the people by the legislature, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature has passed Bill No. . . . concerning (statement of subject). Tbis bill would (concise description). Should this bill be:

- Approved
- Rejected

(5) For a referendum measure by state voters on a bill the legislature has passed, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature passed . . . Bill No. . . . concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should this bill be:

Approved
Rejected

(6) The legislature may specify the statement of subject or concise description, or both, in a referendum bill that it refers to the people. The legislature may specify the concise description for an alternative it submits for an initiative to the legislature. If the legislature fails to specify these matters, the attorney general shall prepare the material that was not specified. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

The attorney general shall specify the statement of subject and concise description for an initiative to the people, an initiative to the legislature, and a referendum measure. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

Sec. 1807. RCW 29.79.040 and 2000 c 197 s 2 are each reenacted to read as follows:

BALLOT TITLE AND SUMMARY—FORMULATION BY ATTORNEY GENERAL. Within five days after the receipt of an initiative or referendum the attorney general shall formulate the ballot title, or portion of the ballot title that the legislature has not provided, required by RCW 29.79.035 and a summary of the measure, not to exceed seventy-five words, and transmit the serial number for the measure, complete ballot title, and summary to the secretary of state. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits in this section.

Sec. 1808. RCW 29.79.050 and 2000 c 197 s 3 are each reenacted to read as follows:

BALLOT TITLE AND SUMMARY—NOTICE. Upon the filing of the ballot title and summary for a state initiative or referendum measure in the office of secretary of state, the secretary of state shall notify by telephone and by mail, and, if requested, by other electronic means, the person proposing the measure, the prime sponsor of a referendum bill or alternative to an initiative to the legislature, the chief clerk of the house of representatives, the secretary of the senate, and any other individuals who have made written request for such notification of the exact language of the ballot title and summary.

Sec. 1809. RCW 29.79.060 and 2000 c 197 s 4 are each reenacted to read as follows:

BALLOT TITLE AND SUMMARY—APPEAL TO SUPERIOR COURT. Any persons, including the attorney general or either or both houses of the legislature, dissatisfied with the ballot title or summary for a state initiative or referendum may, within five days from the filing of the ballot title in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title or summary, and their objections to the ballot title or summary and requesting amendment of the ballot title or summary by the court. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits contained in this section.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the secretary of state, upon the attorney general, and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the ballot title or summary, and the objections to that ballot title or summary, may hear arguments, and shall, within five days, render its decision and file with the secretary of state a certified copy of such ballot title or summary as it determines will meet the requirements of RCW 29.79.040. The decision of the superior court shall be final. Such appeal shall be heard without costs to either party.

Sec. 1810. RCW 29.79.070 and 2000 c 197 s 5 are each reenacted to read as follows:

BALLOT TITLE AND SUMMARY—MAILED TO PROPONENTS AND OTHER PERSONS—APPEARANCE ON PETITIONS. When the ballot title and summary are finally established, the secretary of state shall file the instrument establishing it with the proposed measure and transmit a copy thereof by mail to the person proposing the measure, the chief clerk of the house of representatives, the secretary of the senate, and to any other individuals who have made written request for such notification. Thereafter such ballot title shall be the title of the measure in all petitions, ballots, and other proceedings in relation thereto. The summary shall appear on all petitions directly following the ballot title.

Sec. 1811. RCW 29.79.080 and 1982 c II6 s 8 are each amended to read as follows:

PETITIONS—PAPER—SIZE—CONTENTS. The person proposing the measure shall print blank petitions upon single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. Each petition at the time of circulating, signing, and filing with the secretary of state (~~shall~~) must consist of not more than one sheet with numbered lines for not more than twenty signatures, with the prescribed warning and title, (~~shall~~) be in the form required by RCW 29.79.090, 29.79.100, or 29.79.110, (~~as now or hereafter amended,~~) and (~~shall~~) have a readable, full, true, and correct copy of the proposed measure (~~referred to therein~~) printed on the reverse side of the petition.

Sec. 1812. RCW 29.79.090 and 1982 c 116 s 9 are each amended to read as follows:

PETITIONS TO LEGISLATURE—FORM. Petitions for proposing measures for submission to the legislature at its next regular session(~~, shall~~) must be substantially in the following form:

((WARNING

~~Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.)) The warning prescribed by RCW 29.79.115; followed by:~~

INITIATIVE PETITION FOR SUBMISSION TO THE LEGISLATURE

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that this petition and the proposed measure known as Initiative Measure No. . . . and entitled (here set forth the established ballot title of the measure), a full, true, and correct copy of which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

((Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)				
1 _____	_____	_____	_____	_____
2 _____	_____	_____	_____	_____
3 _____	_____	_____	_____	_____
ete.))				

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Sec. 1813. RCW 29.79.100 and 1982 c 116 s 10 are each amended to read as follows:

PETITIONS TO PEOPLE—FORM. Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election(~~(, shall)~~) must be substantially in the following form:

((WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.)) The warning prescribed by RCW 29.79.115; followed by:

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. . . . , entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be

submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the day of November, ((19--)) (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

((Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)				
1				
2				
3				
etc.))				

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Sec. 1814. RCW 29.79.110 and 1993 c 256 s 10 are each amended to read as follows:

REFERENDUM PETITIONS—FORM. Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, ((shall)) must be substantially in the following form:

((WARNING

~~Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.)) The warning prescribed by RCW 29.79.115; followed by:~~

PETITION FOR REFERENDUM

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No., filed to revoke a (or part or parts of a) bill that (concise statement required by RCW ((29.79.055)) 29.27.066 (as recodified by this act)) and that was passed by the legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the day of November, ((19--)) (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

((Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)				
1 _____	_____	_____	_____	_____
2 _____	_____	_____	_____	_____
3 _____	_____	_____	_____	_____
ete.))				

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Sec. 1815. RCW 29.79.115 and 1993 c 256 s 5 are each amended to read as follows:

WARNING STATEMENT—FURTHER REQUIREMENTS. The word "warning" and the following warning statement regarding signing petitions ((that)) must appear on petitions as prescribed by ((RCW 29.79.090, 29.79.100, and 29.79.110 shall)) this title and must be printed on each petition sheet such that they occupy not less than four square inches of the front of the petition sheet.

WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.

Sec. 1816. RCW 29.79.120 and 1982 c 116 s 12 are each amended to read as follows:

PETITIONS—SIGNATURES—NUMBER NECESSARY. When the person proposing any initiative measure has (~~secured upon such initiative petition a number of~~) obtained signatures of legal voters equal to or exceeding eight percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, or when the person or organization demanding any referendum of an act or part of an act of the legislature (~~or any part thereof has secured upon any such referendum petition~~) has obtained a number of signatures of legal voters equal to or exceeding four percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, (~~he or they may submit~~) the petition containing the signatures may be submitted to the secretary of state for filing.

Sec. 1817. RCW 29.79.140 and 1965 c 9 s 29.79.140 are each reenacted to read as follows:

PETITIONS—TIME FOR FILING. The time for submitting initiative or referendum petitions to the secretary of state for filing is as follows:

(1) A referendum petition ordering and directing that the whole or some part or parts of an act passed by the legislature be referred to the people for their approval or rejection at the next ensuing general election or a special election ordered by the legislature, must be submitted not more than ninety days after the final adjournment of the session of the legislature which passed the act;

(2) An initiative petition proposing a measure to be submitted to the people for their approval or rejection at the next ensuing general election, must be submitted not less than four months before the date of such election;

(3) An initiative petition proposing a measure to be submitted to the legislature at its next ensuing regular session must be submitted not less than ten days before the commencement of the session.

Sec. 1818. RCW 29.79.150 and 1982 c 116 s 13 are each amended to read as follows:

PETITIONS—ACCEPTANCE OR REJECTION BY SECRETARY OF STATE. The secretary of state may refuse to file any initiative or referendum petition being submitted upon any of the following grounds:

(1) That the petition (~~(is not in the form)~~) does not contain the information required by RCW 29.79.090, 29.79.100, or 29.79.110 (~~(as now or hereafter amended)~~).

(2) That the petition clearly bears insufficient signatures.

(3) That the time within which the petition may be filed has expired.

In case of such refusal, the secretary of state shall endorse on the petition the word "submitted" and the date, and retain the petition pending appeal.

If none of the grounds for refusal exists, the secretary of state must accept and file the petition.

Sec. 1819. RCW 29.79.160 and 1965 c 9 s 29.79.160 are each amended to read as follows:

PETITIONS—REVIEW OF REFUSAL TO ACCEPT AND FILE. If the secretary of state refuses to file an initiative or referendum petition when submitted (~~(to him)~~) for filing, the persons submitting it for filing may, within ten days after (~~(his)~~) the refusal, apply to the superior court of Thurston county for (~~(a citation)~~) an order requiring the secretary of state to bring the petitions before the court, and for a writ of mandate to compel (~~(him)~~) the secretary of state to file it. The application (~~(shall)~~) takes precedence over other cases and matters and (~~(shall)~~) must be speedily heard and determined.

If the court issues the citation, and determines that the petition is legal in form and apparently contains the requisite number of signatures and was submitted for filing within the time prescribed in the Constitution, it shall issue its mandate requiring the secretary of state to file it (~~(in his office)~~) as of the date of submission for filing.

The decision of the superior court granting a writ of mandate (~~(shall be)~~) is final.

Sec. 1820. RCW 29.79.170 and 1988 c 202 s 28 are each amended to read as follows:

PETITIONS—REVIEW—APPELLATE REVIEW OF SUPERIOR COURT'S REFUSAL TO ISSUE MANDATE. The decision of the superior court refusing to grant a writ of mandate(~~(s)~~) may be reviewed by the supreme court within five days after the decision of the superior court. The review

~~((shall))~~ must be considered an emergency matter of public concern, and ~~((shall))~~ be heard and determined with all convenient speed~~((and))~~. If the supreme court decides that the petitions are legal in form and apparently contain the requisite number of signatures of legal voters, and were filed within the time prescribed in the Constitution, it shall issue its mandate directing the secretary of state to file the petition ~~((in his office))~~ as of the date of submission.

Sec. 1821. RCW 29.79.180 and 1965 c 9 s 29.79.180 are each reenacted to read as follows:

PETITIONS—DESTRUCTION ON FINAL REFUSAL. If no appeal is taken from the refusal of the secretary of state to file a petition within the time prescribed, or if an appeal is taken and the secretary of state is not required to file the petition by the mandate of either the superior or the supreme court, the secretary of state shall destroy it.

Sec. 1822. RCW 29.79.190 and 1982 c 116 s 14 are each reenacted to read as follows:

PETITIONS—CONSOLIDATION INTO VOLUMES. If the secretary of state accepts and files an initiative or referendum petition upon its being submitted for filing or if he or she is required to file it by the court, he or she shall, in the presence of the person submitting such petition for filing if he or she desires to be present, arrange and assemble the sheets containing the signatures into such volumes as will be most convenient for verification and canvassing and shall consecutively number the volumes and stamp the date of filing on each volume.

Sec. 1823. RCW 29.79.200 and 1993 c 368 s 1 are each reenacted to read as follows:

PETITIONS—VERIFICATION AND CANVASS OF SIGNATURES, OBSERVERS—STATISTICAL SAMPLING—INITIATIVES TO LEGISLATURE, CERTIFICATION OF. Upon the filing of an initiative or referendum petition, the secretary of state shall proceed to verify and canvass the names of the legal voters on the petition. The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed measure so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court of Thurston county. The secretary of state may limit the number of observers to not less than two on each side, if in his or her opinion, a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. The secretary of state may use any statistical sampling techniques for this verification and canvass which have been adopted by rule as provided by chapter 34.05 RCW. No petition will be rejected on the basis of any statistical method employed, and no petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains fewer than the requisite number of signatures of legal voters. If the secretary of state finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature. For an initiative to the legislature, the secretary of state shall transmit a certified copy of the proposed measure to the legislature at the opening of its session and, as soon as the signatures on the petition have been verified and canvassed, the secretary of state shall send to the legislature a

certificate of the facts relating to the filing, verification, and canvass of the petition.

Sec. 1824. RCW 29.79.210 and 1988 c 202 s 29 are each reenacted to read as follows:

PETITIONS—COUNT OF SIGNATURES—REVIEW. Any citizen dissatisfied with the determination of the secretary of state that an initiative or referendum petition contains or does not contain the requisite number of signatures of legal voters may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit the petition to said court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be. Such application and all proceedings had thereunder shall take precedence over other cases and shall be speedily heard and determined.

The decision of the superior court granting or refusing to grant the writ of mandate or injunction may be reviewed by the supreme court within five days after the decision of the superior court, and if the supreme court decides that a writ of mandate or injunction, as the case may be, should issue, it shall issue the writ directed to the secretary of state; otherwise, it shall dismiss the proceedings. The clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court.

Sec. 1825. RCW 29.79.230 and 1965 c 9 s 29.79.230 are each amended to read as follows:

INITIATIVES AND REFERENDUMS TO VOTERS—CERTIFICATES OF SUFFICIENCY. If a referendum or initiative petition for submission of a measure to the people is found sufficient, the secretary of state shall at the time and in the manner that he or she certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the next ensuing general election or special election ordered by the legislature.

Sec. 1826. RCW 29.79.270 and 1965 c 9 s 29.79.270 are each reenacted to read as follows:

REJECTED INITIATIVE TO LEGISLATURE TREATED AS REFERENDUM BILL. Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature or the legislature takes no action thereon before the end of the regular session at which it is submitted, the secretary of state shall certify the serial number and ballot title thereof to the county auditors for printing on the ballots at the next ensuing general election in like manner as initiative measures for submission to the people are certified.

Sec. 1827. RCW 29.79.280 and 1965 c 9 s 29.79.280 are each reenacted to read as follows:

SUBSTITUTE FOR REJECTED INITIATIVE TREATED AS REFERENDUM BILL. If the legislature, having rejected a measure submitted to it by initiative petition, proposes a different measure dealing with the same subject, the secretary of state shall give that measure the same number as that borne by the initiative measure followed by the letter "B." Such measure so

designated as "Alternative Measure No. . . . B," together with the ballot title thereof, when ascertained, shall be certified by the secretary of state to the county auditors for printing on the ballots for submission to the voters for their approval or rejection in like manner as initiative measures for submission to the people are certified.

Sec. 1828. RCW 29.79.290 and 2000 c 197 s 6 are each reenacted to read as follows:

SUBSTITUTE FOR REJECTED INITIATIVE—CONCISE DESCRIPTION. For a measure designated as "Alternative Measure No. . . . B," the secretary of state shall obtain from the measure adopting the alternative, or otherwise the attorney general, a concise description of the alternative measure that differs from the concise description of the original initiative and indicates as clearly as possible the essential differences between the two measures.

Sec. 1829. RCW 29.79.300 and 1965 c 9 s 29.79.300 are each amended to read as follows:

PRINTING BALLOT TITLES ON BALLOTS—ORDER AND FORM. The county auditor of each county shall ~~((cause to be printed))~~ print on the official ballots for the election at which initiative and referendum measures are to be submitted to the people for their approval or rejection, the serial numbers and ballot titles~~(s)~~ certified by the secretary of state. They ~~((shall))~~ must appear under separate headings in the order of the serial numbers as follows:

- (1) Measures proposed for submission to the people by initiative petition ~~((shall))~~ will be under the heading, "Proposed by Initiative Petition";
- (2) Bills passed by the legislature and ordered referred to the people by referendum petition ~~((shall))~~ will be under the heading, "Passed by the Legislature and Ordered Referred by Petition";
- (3) Bills passed and referred to the people by the legislature ~~((shall))~~ will be under the heading, "Proposed to the People by the Legislature";
- (4) Measures proposed to the legislature and rejected or not acted upon ~~((shall))~~ will be under the heading, "Proposed to the Legislature and Referred to the People";
- (5) Measures proposed to the legislature and alternative measures passed by the legislature in lieu thereof ~~((shall))~~ will be under the heading, "Initiated by Petition and Alternative by Legislature."

**PART 19
REDISTRICTING**

Sec. 1901. RCW 29.70.100 and 1984 c 13 s 4 are each reenacted to read as follows:

COUNTIES, MUNICIPAL CORPORATIONS, AND SPECIAL PURPOSE DISTRICTS. (1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in

RCW 44.05.030 shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) No later than eight months after its receipt of federal decennial census data, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. The municipal corporation, county, or district shall hold at least one public hearing on the redistricting plan at least one week before adoption of the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the county in which he or she resides, within forty-five days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district.

Sec. 1902. RCW 29.15.026 and 1991 c 178 s 2 are each reenacted to read as follows:

INFORMATION ON GEOGRAPHICAL BOUNDARIES. (1) The legislative authority of each county and each city, town, and special purpose district which lies entirely within the county shall provide the county auditor accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the auditor is kept current.

(2) A city, town, or special purpose district that lies in more than one county shall provide the secretary of state accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the secretary is kept current. The secretary of state shall promptly transmit to each county in which a city, town, or special purpose district is located information regarding the boundaries of that jurisdiction which is provided to the secretary.

Sec. 1903. RCW 29.10.060 and 1971 ex.s. c 202 s 27 are each amended to read as follows:

CHANGE OF PRECINCT BOUNDARIES—TRANSFER OF REGISTRATION. If the boundaries of any city, township, or rural precinct are changed in the manner provided by law, the county auditor shall transfer the registration cards of every registered voter whose place of residence is affected thereby to the files of the proper precinct, noting thereon the name or number of the new precinct, or change the addresses, the precinct names or numbers, and the special district designations for those registered voters on the voter registration lists of the county. It shall not be necessary for any registered voter whose residence has been changed from one precinct to another, by a change of boundary, to apply to the registration officer for a transfer of registration. The county auditor shall mail to each registrant in the new precinct a notice that his or her precinct has been changed from to, and that thereafter ~~((he))~~ the registrant will be entitled to vote in the new precinct, giving the name or number.

Sec. 1904. RCW 29.04.140 and 1989 c 278 s 2 are each amended to read as follows:

MAPS AND CENSUS CORRESPONDENCE LISTS—APPORTIONMENT—DUTIES OF SECRETARY OF STATE. (1) With regard to functions relating to census, apportionment, and the establishment of legislative and congressional districts, the secretary of state shall:

~~(a) ((Adopt rules pursuant to chapter 34.05 RCW governing the preparation, maintenance, distribution, review, and filing of precinct maps under RCW 29.04.050;~~

~~(b))~~ Coordinate and monitor precinct mapping functions of the county auditors and county engineers;

~~((c))~~ ~~(b)~~ Maintain official state base maps and correspondence lists and maintain an index of all such maps and lists;

~~((d))~~ ~~(c)~~ Furnish to the United States bureau of the census as needed for the decennial census of population, current, accurate, and easily readable versions of maps of all counties, cities, towns, and other areas of this state, which indicate current precinct boundaries together with copies of the census correspondence lists.

(2) The secretary of state shall serve as the state liaison with the United States bureau of census on matters relating to the preparation of maps and the tabulation of population for apportionment purposes.

**PART 20
POLITICAL PARTIES**

Sec. 2001. RCW 29.42.010 and 1977 ex.s. c 329 s 16 are each amended to read as follows:

AUTHORITY—GENERALLY. (1) Each political party organization ~~((shall have the power to))~~ may:

~~((1))~~ (a) Make its own rules and regulations;

~~((2))~~ Call conventions;

~~(3)~~ Elect delegates to conventions, state and national;

~~(4)~~ Fill vacancies on the ticket;

~~(5)~~ Provide for the nomination of presidential electors;)) and

~~((6))~~ (b) Perform all functions inherent in such an organization((:)),

~~((PROVIDED, That))~~ (2) Only major political parties ~~((shall have the power to))~~ may designate candidates to appear on the state primary ~~((election))~~ ballot as provided in RCW 29.18.150 ~~((as now or hereafter amended))~~.

Sec. 2002. RCW 29.42.020 and 1987 c 295 s 11 are each amended to read as follows:

STATE COMMITTEE. The state committee of each major political party ~~((shall))~~ consists of one committeeman and one committeewoman from each county elected by the county central committee at its organization meeting. It ~~((shall))~~ must have a chair and vice-chair ~~((who must be))~~ of opposite sexes. This committee shall meet during January of each odd-numbered year for the purpose of organization at a time and place designated by a ~~((sufficient notice to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring committee. For the purpose of this section a))~~ notice mailed at least one week ~~((prior to))~~ before the date of the meeting ~~((shall constitute sufficient notice))~~ to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring committee. At its organizational meeting it shall elect its chair and vice-chair, and such officers as its bylaws may provide, and adopt bylaws, rules, and regulations. It ~~((shall have power to))~~ may:

(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention ~~((shall))~~ designates. The manner, number, and procedure for selection of state convention delegates ~~((shall be))~~ is subject to the committee's rules and regulations duly adopted;

(2) Provide for the election of delegates to national conventions;

(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;

(4) Provide for the nomination of presidential electors; and

(5) Perform all functions inherent in such an organization.

Notwithstanding any provision of this chapter, the committee ~~((shall not set rules which shall govern))~~ may not adopt rules governing the conduct of the actual proceedings at a party state convention.

Sec. 2003. RCW 29.42.030 and 1987 c 295 s 12 are each amended to read as follows:

COUNTY CENTRAL COMMITTEE—ORGANIZATION MEETINGS. The county central committee of each major political party ~~((shall))~~ consists of the precinct committee officers of the party from the several voting precincts of

the county. Following each state general election held in even-numbered years, this committee shall meet for the purpose of organization at an easily accessible location within the county, subsequent to the certification of precinct committee officers by the county auditor and no later than the second Saturday of the following January. The authorized officers of the retiring committee shall cause notice of the time and place of ~~((such))~~ the meeting to be mailed to each precinct committee officer at least seventy-two hours ~~((prior to))~~ before the date of the meeting.

At its organization meeting, the county central committee shall elect a chair and vice-chair ~~((who must be))~~ of opposite sexes ~~((; it shall also elect a state committeeman and a state committeewoman))~~.

Sec. 2004. RCW 29.42.040 and 1990 c 59 s 104 are each reenacted to read as follows:

PRECINCT COMMITTEE OFFICER, ELIGIBILITY. Any member of a major political party who is a registered voter in the precinct may upon payment of a fee of one dollar file his or her declaration of candidacy as prescribed under RCW 29.15.010 with the county auditor for the office of precinct committee officer of his or her party in that precinct. When elected the precinct committee officer shall serve so long as the committee officer remains an eligible voter in that precinct and until a successor has been elected at the next ensuing state general election in the even-numbered year.

Sec. 2005. RCW 29.42.050 and 1991 c 363 s 34 are each amended to read as follows:

PRECINCT COMMITTEE OFFICER—ELECTION—DECLARATION OF CANDIDACY, FEE—TERM—VACANCY. The statutory requirements for filing as a candidate at the primaries ~~((shall))~~ apply to candidates for precinct committee officer, except that the filing period for this office alone ~~((shall be))~~ is extended to and includes the Friday immediately following the last day for political parties to fill vacancies in the ticket as provided by RCW 29.18.150 ~~((; and))~~. The office shall not be voted upon at the primaries, but the names of all candidates must appear under the proper party and office designations on the ballot for the general ~~((November))~~ election for each even-numbered year, and the one receiving the highest number of votes ~~((shall))~~ will be declared elected ~~((; PROVIDED, That))~~. However, to be declared elected, a candidate must receive at least ten percent of the number of votes cast for the candidate of the candidate's party receiving the greatest number of votes in the precinct. ~~((Any person elected to the office of precinct committee officer who has not filed a declaration of candidacy shall pay the fee of one dollar to the county auditor for a certificate of election.))~~ The term of office of precinct committee officer ~~((shall be for))~~ is two years, commencing upon completion of the official canvass of votes by the county canvassing board of election returns. ~~((Should any vacancy occur in this office by reason of death, resignation, or disqualification of the incumbent, or because of failure to elect, the respective county chair of the county central committee shall be empowered to fill such vacancy by appointment: PROVIDED, HOWEVER, That in legislative districts having a majority of its precincts in a county with a population of one million or more, such appointment shall be made only upon the recommendation of the legislative district chair: PROVIDED, That the person so appointed shall have~~

~~the same qualifications as candidates when filing for election to such office for such precinct. PROVIDED FURTHER, That when a vacancy in the office of precinct committee officer exists because of failure to elect at a state general election, such vacancy shall not be filled until after the organization meeting of the county central committee and the new county chair selected as provided by RCW 29.42.030.))~~

Sec. 2006. RCW 29.42.070 and 1991 c 363 s 35 are each amended to read as follows:

LEGISLATIVE DISTRICT CHAIR—ELECTION—TERM—REMOVAL. Within forty-five days after the statewide general election in even-numbered years, ~~((or within thirty days following July 30, 1967, for the biennium ending with the 1968 general elections,))~~ the county chair of each major political party shall call separate meetings of all elected precinct committee officers in each legislative district, a majority of the precincts of which are within a county with a population of one million or more for the purpose of electing a legislative district chair in such district. The district chair shall hold office until the next legislative district reorganizational meeting two years later, or until a successor is elected.

The legislative district chair ~~((can only))~~ may be removed only by the majority vote of the elected precinct committee officers in the chair's district.

PART 21 CRIMES AND PENALTIES

Subpart 21.1 General Provisions

Sec. 2101. RCW 29.85.245 and 2001 c 41 s 12 are each amended to read as follows:

ACTION AGAINST VOTING, REGISTRATION IRREGULARITIES. (1) A county auditor who suspects a person of fraudulent voter registration, vote tampering, or irregularities in voting shall transmit his or her suspicions and observations without delay to the canvassing board.

(2) The county auditor shall make a good faith effort to contact the person in question without delay. If the county auditor is unable to contact the person, or if, after contacting the person, the auditor still suspects fraudulent voter registration, vote tampering, or irregularities in voting, the auditor shall refer the issue to the county prosecuting attorney to determine if further action is warranted.

(3) When a complaint providing information concerning fraudulent voter registration, vote tampering, or irregularities in voting ~~((are is))~~ is presented to the office of the prosecuting attorney, that office shall file charges in all cases where warranted.

Sec. 2102. RCW 29.82.210 and 1965 c 9 s 29.82.210 are each amended to read as follows:

VIOLATIONS BY OFFICERS. Every officer who willfully violates ~~((any of the provisions of this chapter))~~ sections 1407 through 1423 of this act, for the violation of which no penalty is ~~((herein))~~ prescribed in this title or who willfully

fails to comply with the provisions of this chapter (~~(shall be)~~) is guilty of a gross misdemeanor.

Sec. 2103. RCW 29.38.070 and 2001 c 241 s 21 are each amended to read as follows:

PENALTY. A person who willfully violates any provision of this (~~chapter~~) title regarding the conduct of mail ballot primaries or elections is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 2104. RCW 29.85.275 and 1991 c 81 s 19 are each reenacted to read as follows:

POLITICAL ADVERTISING, REMOVING OR DEFACING. A person who removes or defaces lawfully placed political advertising including yard signs or billboards without authorization is guilty of a misdemeanor punishable to the same extent as a misdemeanor that is punishable under RCW 9A.20.021. The defacement or removal of each item constitutes a separate violation.

Subpart 21.2 Registration

Sec. 2105. RCW 29.07.400 and 1994 c 57 s 24 are each reenacted to read as follows:

OFFICIALS' VIOLATIONS. If any county auditor or registration assistant:

- (1) Willfully neglects or refuses to perform any duty required by law in connection with the registration of voters; or
- (2) Willfully neglects or refuses to perform such duty in the manner required by voter registration law; or
- (3) Enters or causes or permits to be entered on the voter registration records the name of any person in any other manner or at any other time than as prescribed by voter registration law or enters or causes or permits to be entered on such records the name of any person not entitled to be thereon; or
- (4) Destroys, mutilates, conceals, changes, or alters any registration record in connection therewith except as authorized by voter registration law, he or she is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2106. RCW 29.07.405 and 2001 c 41 s 2 are each reenacted to read as follows:

DISENFRANCHISEMENT OR DISCRIMINATION—PENALTY. An election officer or a person who intentionally disenfranchises an eligible citizen or discriminates against a person eligible to vote by denying voter registration is guilty of a misdemeanor punishable under RCW 9A.20.021.

Sec. 2107. RCW 29.07.410 and 1994 c 57 s 25 are each reenacted to read as follows:

VOTERS' AND OFFICIALS' VIOLATIONS. Any person who:

- (1) Knowingly provides false information on an application for voter registration under any provision of this title;
- (2) Knowingly makes or attests to a false declaration as to his or her qualifications as a voter;
- (3) Knowingly causes or permits himself or herself to be registered using the name of another person;

(4) Knowingly causes himself or herself to be registered under two or more different names;

(5) Knowingly causes himself or herself to be registered in two or more counties;

(6) Offers to pay another person to assist in registering voters, where payment is based on a fixed amount of money per voter registration;

(7) Accepts payment for assisting in registering voters, where payment is based on a fixed amount of money per voter registration; or

(8) Knowingly causes any person to be registered or causes any registration to be transferred or canceled except as authorized under this title, is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 2108. RCW 29.85.249 and 2001 c 41 s 13 are each reenacted to read as follows:

UNQUALIFIED REGISTRATION. A person who knows that he or she does not possess the legal qualifications of a voter and who registers to vote is guilty of a misdemeanor punishable under RCW 9A.20.021.

Subpart 21.3 Petitions and Signatures

Sec. 2109. RCW 29.79.480 and 1993 c 256 s 3 are each amended to read as follows:

VIOLATIONS BY OFFICERS. Every officer who willfully violates any of the provisions of ~~((this chapter or))~~ chapter 29A.--- (Part 18 of this act) or 29.81 RCW, for the violation of which no penalty is herein prescribed, or who willfully fails to comply with the provisions of ~~((this chapter or))~~ chapter 29A.--- (Part 18 of this act) or 29.81 RCW, ~~((shall be))~~ is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2110. RCW 29.82.220 and 1984 c 170 s 12 are each amended to read as follows:

VIOLATIONS—CORRUPT PRACTICES. Every person is guilty of a gross misdemeanor, who:

(1) For any consideration, compensation, gratuity, reward, or thing of value or promise thereof, signs or declines to sign any recall petition; or

(2) Advertises in any newspaper, magazine or other periodical publication, or in any book, pamphlet, circular, or letter, or by means of any sign, signboard, bill, poster, handbill, or card, or in any manner whatsoever, that he or she will either for or without compensation or consideration circulate, solicit, procure, or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any recall petition or vote for or against any recall; or

(3) For pay or any consideration, compensation, gratuity, reward, or thing of value or promise thereof, circulates, or solicits, procures, or obtains or attempts to procure or obtain signatures upon any recall petition; or

(4) Pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, or to circulate or solicit,

procure, or attempt to procure or obtain signatures upon any recall petition, or to vote for or against any recall; or

(5) By any other corrupt means or practice or by threats or intimidation interferes with or attempts to interfere with the right of any legal voter to sign or not to sign any recall petition or to vote for or against any recall; or

(6) Receives, accepts, handles, distributes, pays out, or gives away, directly or indirectly, any money, consideration, compensation, gratuity, reward, or thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose stockholders are nonresidents of the state of Washington, for any service, work, or assistance of any kind done or rendered for the purpose of aiding in procuring signatures upon any recall petition or the adoption or rejection of any recall.

Sec. 2111. RCW 29.79.440 and 1993 c 256 s 2 are each amended to read as follows:

VIOLATIONS BY SIGNERS. Every person who signs an initiative or referendum petition with any other than his or her true name (~~(shall be)~~) is guilty of a class C felony punishable under RCW 9A.20.021. Every person who knowingly signs more than one petition for the same initiative or referendum measure or who signs an initiative or referendum petition knowing that he or she is not a legal voter or who makes a false statement as to his or her residence on any initiative or referendum petition, (~~shall be~~) is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2112. RCW 29.82.170 and 1984 c 170 s 11 are each amended to read as follows:

VIOLATIONS BY SIGNERS—OFFICERS. Every person who signs a recall petition with any other than his or her true name is guilty of a felony. Every person who knowingly (1) signs more than one petition for the same recall, (2) signs a recall petition when he or she is not a legal voter, or (3) makes a false statement as to (~~his~~) residence on any recall petition is guilty of a gross misdemeanor. Every registration officer who makes any false report or certificate on any recall petition is guilty of a gross misdemeanor.

Sec. 2113. RCW 29.79.490 and 1993 c 256 s 4 are each amended to read as follows:

VIOLATIONS—CORRUPT PRACTICES. Every person (~~shall be~~) is guilty of a gross misdemeanor who:

(1) For any consideration or gratuity or promise thereof, signs or declines to sign any initiative or referendum petition; or

(2) Provides or receives consideration for soliciting or procuring signatures on an initiative or referendum petition if any part of the consideration is based upon the number of signatures solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures solicited or procured; or

(3) Gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign or to vote for or against any initiative or referendum measure; or

(4) Interferes with or attempts to interfere with the right of any voter to sign or not to sign an initiative or referendum petition or with the right to vote for or

against an initiative or referendum measure by threats, intimidation, or any other corrupt means or practice; or

(5) Receives, handles, distributes, pays out, or gives away, directly or indirectly, money or any other thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose members or stockholders have their residence outside, the state of Washington, for any service rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or for the purpose of aiding in the adoption or rejection of any initiative or referendum measure (~~(= PROVIDED, That)~~). This subsection (~~(shall)~~) does not apply to or prohibit any activity (~~(which)~~) that is properly reported in accordance with the applicable provisions of chapter 42.17 RCW.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2114. RCW 29.15.080 and 1984 c 142 s 8 are each reenacted to read as follows:

PETITIONS—PENALTIES FOR IMPROPERLY SIGNING. The following apply to persons signing nominating petitions prescribed by RCW 29.15.060:

(1) A person who signs a petition with any other than his or her name shall be guilty of a misdemeanor.

(2) A person shall be guilty of a misdemeanor if the person knowingly: Signs more than one petition for any single candidacy of any single candidate; signs the petition when he or she is not a legal voter; or makes a false statement as to his or her residence.

Sec. 2115. RCW 29.15.110 and 1965 c 9 s 29.18.080 are each amended to read as follows:

DUPLICATION OF NAMES—CONSPIRACY—CRIMINAL AND CIVIL LIABILITY. Any person who with intent to mislead or confuse the electors conspires with another person who has a surname similar to an incumbent seeking reelection to the same office, or to an opponent for the same office whose political reputation has been well established, by persuading such other person to file for such office with no intention of being elected, but to defeat the incumbent or the well known opponent, (~~(shall be)~~) is guilty of a felony. In addition (~~(there to such person or persons shall be)~~), all conspirators are subject to a suit for civil damages, the amount of which (~~(shall)~~) may not exceed the salary (~~(which)~~) that the injured person would have received had he or she been elected or reelected.

Sec. 2116. RCW 29.79.500 and 1993 c 256 s 1 are each reenacted to read as follows:

PAID PETITION SOLICITORS—FINDING. The legislature finds that paying a worker, whose task it is to secure the signatures of voters on initiative or referendum petitions, on the basis of the number of signatures the worker secures on the petitions encourages the introduction of fraud in the signature gathering process. Such a form of payment may act as an incentive for the worker to encourage a person to sign a petition which the person is not qualified to sign or to sign a petition for a ballot measure even if the person has already signed a petition for the measure. Such payments also threaten the integrity of

the initiative and referendum process by providing an incentive for misrepresenting the nature or effect of a ballot measure in securing petition signatures for the measure.

Subpart 21.4

Filing for Office, Declarations, and Nominations

NEW SECTION. Sec. 2117. FILING FOR OFFICE, DECLARATIONS, AND NOMINATIONS. Every person who:

(1) Knowingly provides false information on his or her declaration of candidacy or petition of nomination; or

(2) Conceals or fraudulently defaces or destroys a certificate that has been filed with an elections officer under chapter 29.24 RCW or a declaration of candidacy or petition of nomination that has been filed with an elections officer, or any part of such a certificate, declaration, or petition, is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 2118. RCW 29.15.100 and 1965 c 9 s 29.18.070 are each amended to read as follows:

DUPLICATION OF, USE OF NONEXISTENT OR UNTRUE NAMES, AS FELONY. A person is guilty of a felony who files a declaration of candidacy for any public office of:

(1) A nonexistent or fictitious person; or

(2) The name of any person not his or her true name; or

(3) A name similar to that of an incumbent seeking reelection to the same office with intent to confuse and mislead the electors by taking advantage of the public reputation of the incumbent; or

(4) A surname similar to one who has already filed for the same office, and whose political reputation is widely known, with intent to confuse and mislead the electors by capitalizing on the public reputation of the candidate who had previously filed.

Subpart 21.5

Ballots

Sec. 2119. RCW 29.85.040 and 1991 c 81 s 3 are each reenacted to read as follows:

BALLOTS—UNLAWFUL APPROPRIATION, PRINTING, OR DISTRIBUTION. Any person who is retained or employed by any officer authorized by the laws of this state to procure the printing of any official ballot or who is engaged in printing official ballots is guilty of a gross misdemeanor if the person knowingly:

(1) Appropriates any official ballot to himself or herself; or

(2) Gives or delivers any official ballot to or permits any official ballot to be taken by any person other than the officer authorized by law to receive it; or

(3) Prints or causes to be printed any official ballot: (a) In any other form than that prescribed by law or as directed by the officer authorized to procure the printing thereof; or (b) with any other names thereon or with the names spelled otherwise than as directed by such officer, or the names or printing thereon arranged in any other way than that authorized and directed by law.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2120. RCW 29.85.020 and 1991 c 81 s 2 are each reenacted to read as follows:

UNAUTHORIZED EXAMINATION OF BALLOTS, ELECTION MATERIALS—REVEALING INFORMATION. (1) It is a gross misdemeanor for a person to examine, or assist another to examine, any voter record, ballot, or any other state or local government official election material if the person, without lawful authority, conducts the examination:

(a) For the purpose of identifying the name of a voter and how the voter voted; or

(b) For the purpose of determining how a voter, whose name is known to the person, voted; or

(c) For the purpose of identifying the name of the voter who voted in a manner known to the person.

(2) Any person who reveals to another information which the person ascertained in violation of subsection (1) of this section is guilty of a gross misdemeanor.

(3) A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Subpart 21.6 Polling Place

Sec. 2121. RCW 29.51.020 and 1991 c 81 s 20 are each reenacted to read as follows:

ACTS PROHIBITED IN VICINITY OF POLLING PLACE—PROHIBITED PRACTICES AS TO BALLOTS. (1) On the day of any primary or general or special election, no person may, within a polling place, or in any public area within three hundred feet of any entrance to such polling place:

(a) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

(2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction, and may arrest any person creating such obstruction.

(3) No person may:

(a) Except as provided in RCW 29.54.037, remove any ballot from the polling place before the closing of the polls; or

(b) Solicit any voter to show his or her ballot.

(4) No person other than an inspector or judge of election may receive from any voter a voted ballot or deliver a blank ballot to such elector.

(5) Any violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution.

Sec. 2122. RCW 29.51.030 and 1965 c 9 s 29.51.030 are each amended to read as follows:

ELECTIONEERING BY ELECTION OFFICERS. Any election officer who does any electioneering on primary or election day, (~~shall be~~) is guilty of a misdemeanor, and upon conviction (~~shall~~) must be fined in any sum not exceeding one hundred dollars and pay the costs of prosecution.

Sec. 2123. RCW 29.51.221 and 1990 c 59 s 49 are each reenacted to read as follows:

REFUSING TO LEAVE VOTING BOOTH. Deliberately impeding other voters from casting their votes by refusing to leave a voting booth or voting device is a misdemeanor and is subject to the penalties provided in chapter 9A.20 RCW. The precinct election officers may provide assistance in the manner provided by RCW 29.51.200 to any voter who requests it.

Sec. 2124. RCW 29.85.010 and 1991 c 81 s 1 are each reenacted to read as follows:

BALLOTS—REMOVING FROM POLLING PLACE. Any person who, without lawful authority, removes a ballot from a polling place is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2125. RCW 29.85.110 and 1991 c 81 s 9 are each amended to read as follows:

TAMPERING WITH POLLING PLACE MATERIALS. Any person who willfully defaces, removes, or destroys any of the supplies or materials (~~which~~) that the person knows are intended both for use in a polling place and for enabling a voter to prepare his or her ballot is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 2126. RCW 29.85.260 and 1991 c 81 s 18 are each amended to read as follows:

VOTING MACHINES, DEVICES—TAMPERING WITH—EXTRA KEYS. Any person who tampers with or damages or attempts to damage any voting machine or device to be used or being used in a primary or special or general election, or who prevents or attempts to prevent the correct operation of such machine or device, or any unauthorized person who makes or has in his or her possession a key to a voting machine or device to be used or being used in a primary or special or general election, (~~shall be~~) is guilty of a class C felony punishable under RCW 9A.20.021.

Subpart 21.7 Voting

Sec. 2127. RCW 29.85.051 and 1991 c 81 s 4 are each reenacted to read as follows:

DECEPTIVE, INCORRECT VOTE RECORDING. A person is guilty of a gross misdemeanor who knowingly:

(1) Deceives any voter in recording his or her vote by providing incorrect or misleading recording information or by providing faulty election equipment or records; or

(2) Records the vote of any voter in a manner other than as designated by the voter.

Such a gross misdemeanor is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2128. RCW 29.85.060 and 1991 c 81 s 5 are each reenacted to read as follows:

HINDERING OR BRIBING VOTER. Any person who uses menace, force, threat, or any unlawful means towards any voter to hinder or deter such a voter from voting, or directly or indirectly offers any bribe, reward, or any thing of value to a voter in exchange for the voter's vote for or against any person or ballot measure, or authorizes any person to do so, is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 2129. RCW 29.85.070 and 1991 c 81 s 6 are each reenacted to read as follows:

INFLUENCING VOTER TO WITHHOLD VOTE. Any person who in any way, directly or indirectly, by menace or unlawful means, attempts to influence any person in refusing to give his or her vote in any primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2130. RCW 29.85.090 and 1991 c 81 s 7 are each reenacted to read as follows:

SOLICITATION OF BRIBE BY VOTER. Any person who solicits, requests, or demands, directly or indirectly, any reward or thing of value or the promise thereof in exchange for his or her vote or in exchange for the vote of any other person for or against any candidate or for or against any ballot measure to be voted upon at a primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2131. RCW 29.85.210 and 1991 c 81 s 13 are each reenacted to read as follows:

REPEATERS. Any person who votes or attempts to vote more than once at any primary or general or special election is guilty of a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2132. RCW 29.85.220 and 1991 c 81 s 14 are each reenacted to read as follows:

REPEATERS—UNQUALIFIED PERSONS—OFFICERS CONNIVING WITH. Any precinct election officer who knowingly permits any voter to cast a second vote at any primary or general or special election, or knowingly permits any person not a qualified voter to vote at any primary or general or special election, is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 2133. RCW 29.85.240 and 1991 c 81 s 17 are each amended to read as follows:

UNQUALIFIED PERSONS VOTING. Any person who knows that he or she does not possess the legal qualifications of a voter and who votes at any primary or special or general election authorized by law to be held in this state

for any office whatever ~~((shall be))~~ is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 2134. RCW 29.51.230 and 1965 c 9 s 29.51.230 are each amended to read as follows:

UNLAWFUL ACTS BY VOTERS. It ~~((shall be))~~ is unlawful for a voter to:

~~(1) ((Show his ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate for whom he has marked his vote;~~

~~(2))~~ Receive a ballot from any person other than the election officer having charge of the ballots;

~~((3))~~ (2) Vote or offer to vote any ballot except one ~~((that he has))~~ received from the election officer having charge of the ballots;

~~((4) Place any mark upon his ballot by which it may afterward be identified as the one voted by him;~~

~~(5))~~ (3) Fail to return to the election officers any ballot ~~((he))~~ received from an election officer.

A violation of any provision of this section ~~((shall be))~~ is a misdemeanor, punishable by a fine not exceeding one hundred dollars, plus costs of prosecution.

Sec. 2135. RCW 29.51.215 and 1981 c 34 s 2 are each amended to read as follows:

DISABLED VOTERS. Any person violating any provision of RCW 29.51.200~~((, as now or hereafter amended, shall))~~ will be punished as for a misdemeanor.

Sec. 2136. RCW 29.36.370 and 2001 c 24I s 14 are each amended to read as follows:

ABSENTEE BALLOT PENALTY—GENERAL PENALTY. A person who willfully violates any provision of ~~((this))~~ chapter 29A.-- RCW (Part 10 of this act) regarding the assertion or declaration of qualifications to receive or cast an absentee ballot or unlawfully casts a vote by absentee ballot is guilty of a class C felony punishable under RCW 9A.20.021. Except as provided in this chapter ((29.85 RCW)), a person who willfully violates any other provision of ~~((this))~~ chapter 29A.-- RCW (Part 10 of this act) is guilty of a misdemeanor.

**Subpart 21.8
Canvassing and Certifying**

Sec. 2137. RCW 29.85.100 and 1991 c 81 s 8 are each amended to read as follows:

CERTIFICATES OF NOMINATION AND ELECTION—DECLARATIONS OF CANDIDACY—PETITIONS OF NOMINATION—FRAUDS AND FALSEHOODS. Every person who:

(1) Knowingly and falsely issues a certificate of nomination or election; or

(2) Knowingly provides false information on a certificate which must be filed with an elections officer under chapter 29.24 RCW~~((; or~~

~~(3) Knowingly provides false information on his or her declaration of candidacy or petition of nomination; or~~

~~(4) Conceals or fraudulently defaces or destroys a certificate which has been filed with an elections officer under chapter 29.24 RCW or a declaration of candidacy or petition of nomination which has been filed with an elections officer, or any part of such a certificate, declaration, or petition)),~~
is guilty of a class C felony punishable under RCW 9A.20.021.

Sec. 2138. RCW 29.85.170 and 1991 c 81 s 10 are each reenacted to read as follows:

OFFICERS—VIOLATIONS GENERALLY. Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, including primaries, or the provisions of any charter or ordinance of any city or town of this state relating to elections who willfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his or her official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, is guilty of a class C felony punishable under RCW 9A.20.021 and shall forfeit his or her office.

Sec. 2139. RCW 29.85.225 and 1991 c 81 s 15 are each reenacted to read as follows:

DIVULGING BALLOT COUNT. (1) In any location in which ballots are counted, no person authorized by law to be present while votes are being counted may divulge any results of the count of the ballots at any time prior to the closing of the polls for that primary or special or general election.

(2) A violation of this section is a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

Sec. 2140. RCW 29.85.230 and 1991 c 81 s 16 are each reenacted to read as follows:

It shall be a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, for any person to remove or deface the posted copy of the result of votes cast at their precinct or to delay delivery of or change the copy of primary or special or general election returns to be delivered to the proper election officer.

PART 22

NUCLEAR WASTE SITE—ELECTION FOR DISAPPROVAL

Sec. 2201. RCW 29.91.010 and 1986 ex.s. c 1 s 3 are each reenacted to read as follows:

FINDINGS. (1) The legislature and the people find that the federal Nuclear Waste Policy Act provides that within sixty days of the president's recommendation of a site for a high-level nuclear waste repository, a state may disapprove the selection of such site in that state.

(2) The legislature and the people desire, if the governor and legislature do not issue a notice of disapproval within twenty-one days of the president's recommendation, that the people of this state have the opportunity to vote upon disapproval.

Sec. 2202. RCW 29.91.020 and 1986 ex.s. c 1 s 4 are each amended to read as follows:

HIGH-LEVEL NUCLEAR WASTE REPOSITORY—SELECTION OF SITE IN STATE—SPECIAL ELECTION FOR DISAPPROVAL. (1) Within

seven days after any recommendation by the president of the United States of a site in the state of Washington to be a high-level nuclear waste repository under 42 U.S.C. Sec. 10136, the governor shall set the date for a special statewide election to vote on disapproval of the selection of such site. The special election shall be no more than fifty days after the date of the recommendation of the president of the United States.

(2) If either the governor or the legislature submits a notice of disapproval to the United States Congress within twenty-one days of the date of the recommendation by the president of the United States, then the governor is authorized to cancel the special election pursuant to subsection (1) of this section.

Sec. 2203. RCW 29.91.030 and 1986 ex.s. c 1 s 5 are each reenacted to read as follows:

COSTS OF ELECTION. The state of Washington shall assume the costs of any special election called under RCW 29.91.020 in the same manner as provided in RCW 29.13.047 and 29.13.048.

Sec. 2204. RCW 29.91.040 and 1986 ex.s. c 1 s 6 are each reenacted to read as follows:

SPECIAL ELECTION—NOTIFICATION OF AUDITORS—APPLICATION OF ELECTION LAWS. The secretary of state shall promptly notify the county auditors of the date of the special election and certify to them the text of the ballot title for this special election. The general election laws shall apply to the election required by RCW 29.91.020 to the extent that they are not inconsistent with this chapter. Statutory deadlines relating to certification, canvassing, and the voters' pamphlet may be modified for the election held pursuant to RCW 29.91.020 by the secretary of state through emergency rules adopted under RCW 29.04.080.

Sec. 2205. RCW 29.91.050 and 1986 ex.s. c 1 s 7 are each reenacted to read as follows:

BALLOT TITLE. The ballot title for the special election called under RCW 29.91.020 shall be "Shall the Governor be required to notify Congress of Washington's disapproval of the President's recommendation of [name of site] as a national high-level nuclear waste repository?"

Sec. 2206. RCW 29.91.060 and 1986 ex.s. c 1 s 8 are each amended to read as follows:

EFFECT OF VOTE. If the governor or the legislature fails to prepare and submit a notice of disapproval to the United States Congress within fifty-five days of the president's recommendation and a majority of the voters in the special election held pursuant to RCW 29.91.020 favored such notice of disapproval, then the vote of the people shall be binding on the governor. The governor shall prepare and submit the notice of disapproval to the United States Congress pursuant to 42 U.S.C. Sec. 10136.

PART 23 OTHER LAWS AFFECTED

Sec. 2301. RCW 29.13.023 and 1981 c 213 s 3 are each reenacted to read as follows:

FIRST CLASS MAYOR-COUNCIL CITIES—TWELVE COUNCILMEMBERS. All regular elections in first class cities having a mayor-council form of government whose charters provide for twelve councilmembers elected for a term of two years, two being elected from each of six wards, and for the election of a mayor, treasurer, and comptroller for terms of two years, shall be held biennially as provided in RCW 29.13.020. The term of each councilmember, mayor, treasurer, and comptroller shall be four years and until his or her successor is elected and qualified and assumes office in accordance with RCW 29.04.170. The terms of the councilmembers shall be so staggered that six councilmembers shall be elected to office at each regular election.

Sec. 2302. RCW 29.13.024 and 1981 c 213 s 4 are each reenacted to read as follows:

FIRST CLASS MAYOR-COUNCIL CITIES—SEVEN COUNCILMEMBERS. All regular elections in first class cities having a mayor-council form of government whose charters provide for seven councilmembers, one to be elected from each of six wards and one at large, for a term of two years, and for the election of a mayor, comptroller, treasurer and attorney for two year terms, shall be held biennially as provided in RCW 29.13.020. The terms of the six councilmembers to be elected by wards shall be four years and until their successors are elected and qualified and the term of the councilmember to be elected at large shall be two years and until their successors are elected and qualified. The terms of the councilmembers shall be so staggered that three ward councilmembers and the councilmember at large shall be elected at each regular election. The term of the mayor, attorney, treasurer, and comptroller shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170.

Sec. 2303. RCW 43.07.310 and 1992 c 163 s 2 are each amended to read as follows:

DIVISION OF ELECTIONS—DUTIES. The secretary of state, through the division of elections, is responsible for the following duties, as prescribed by Title 29 RCW:

- (1) The filing, verification of signatures, and certification of state initiative, referendum, and recall petitions;
 - (2) The production and distribution of a state voters' ~~((and candidates'))~~ pamphlet;
 - (3) The examination, testing, and certification of voting equipment, voting devices, and vote-tallying systems;
 - (4) The administration, canvassing, and certification of the presidential primary, state primaries, and state general elections;
 - (5) The administration of motor voter and other voter registration and voter outreach programs;
 - (6) The training, testing, and certification of state and local elections personnel as established in RCW 29.60.030;
 - (7) The training of state and local party observers required by RCW 29.60.040;
 - (8) The conduct of postelection reviews as established in RCW 29.60.070;
- and
- (9) Other duties that may be prescribed by the legislature.

PART 24
MISCELLANEOUS

NEW SECTION. **Sec. 2401. RECODIFICATION.** The following sections are recodified in the order in which they appear in parts I through 22 of this act as new chapters and sections of a new elections title of the Revised Code of Washington, to be designated as Title 29A RCW:

- RCW 29.01.005, 29.01.006, 29.01.008, 29.01.042, 29.01.043, 29.01.045,
- 29.01.047, 29.01.050, 29.01.055, 29.01.060, 29.01.065, 29.01.068, 29.01.070,
- 29.01.080, 29.01.090, 29.01.100, 29.01.110, 29.01.113, 29.01.117, 29.01.119,
- 29.01.120, 29.01.130, 29.01.135, 29.01.136, 29.01.137, 29.01.140, 29.01.155,
- 29.01.160, 29.01.170, 29.01.180, 29.01.200, 29.04.001, 29.04.010, 29.04.020,
- 29.57.140, 29.04.025, 29.04.070, 29.04.060, 29.04.085, 29.04.088, 29.04.091,
- 29.04.230, 29.13.070, 29.13.010, 29.13.020, 29.13.045, 29.13.047, 29.13.048,
- 29.60.010, 29.60.030, 29.60.040, 29.60.050, 29.60.060, 29.60.070, 29.60.080,
- 29.60.090, 29.98.010, 29.98.020, 29.98.030, 29.04.080, 29.19.070, 29.60.020,
- 29.07.005, 29.04.095, 29.10.011, 29.08.010, 29.07.010, 29.08.060, 29.07.110,
- 29.08.030, 29.07.220, 29.10.081, 29.07.092, 29.07.160, 29.07.152, 29.07.030,
- 29.07.230, 29.07.070, 29.07.140, 29.07.080, 29.07.090, 29.08.080, 29.08.040,
- 29.07.025, 29.07.430, 29.07.440, 29.07.260, 29.07.270, 29.10.020, 29.10.040,
- 29.10.170, 29.10.051, 29.10.090, 29.10.097, 29.10.100, 29.10.110, 29.10.180,
- 29.10.185, 29.10.015, 29.10.071, 29.10.220, 29.10.075, 29.10.200, 29.10.210,
- 29.10.230, 29.04.250, 29.07.130, 29.04.100, 29.04.110, 29.04.120, 29.04.150,
- 29.04.160, 29.04.240, 29.10.125, 29.10.127, 29.10.130, 29.10.140, 29.10.150,
- 29.33.020, 29.33.041, 29.33.051, 29.33.061, 29.33.081, 29.33.130, 29.33.145,
- 29.33.300, 29.33.310, 29.33.320, 29.33.330, 29.33.340, 29.33.350, 29.33.360,
- 29.04.200, 29.57.010, 29.57.090, 29.57.160, 29.04.040, 29.04.050, 29.04.055,
- 29.48.005, 29.48.007, 29.57.040, 29.57.070, 29.57.100, 29.57.050, 29.57.150,
- 29.27.090, 29.15.025, 29.13.050, 29.04.170, 29.24.010, 29.24.020, 29.24.025,
- 29.24.030, 29.24.035, 29.24.040, 29.24.045, 29.24.055, 29.24.060, 29.24.070,
- 29.15.130, 29.15.140, 29.15.010, 29.15.044, 29.15.020, 29.15.090, 29.15.030,
- 29.15.040, 29.15.050, 29.15.060, 29.15.070, 29.15.125, 29.15.120, 29.15.160,
- 29.15.210, 29.15.220, 29.15.170, 29.15.180, 29.15.190, 29.15.200, 29.15.230,
- 29.04.180, 29.04.190, 29.18.150, 29.18.160, 29.68.070, 29.68.080, 29.68.100,
- 29.68.130, 29.81.210, 29.04.035, 29.81.220, 29.81.230, 29.27.076, 29.81.240,
- 29.81.250, 29.81.260, 29.81.280, 29.81.290, 29.81.300, 29.81.310, 29.81A.010,
- 29.81A.020, 29.81A.030, 29.81A.040, 29.81A.050, 29.81A.060, 29.81A.070,
- 29.81A.080, 29.27.020, 29.27.057, 29.27.061, 29.27.065, 29.27.0653,
- 29.27.0655, 29.27.066, 29.27.0665, 29.27.067, 29.30.005, 29.30.010, 29.30.020,
- 29.30.025, 29.30.040, 29.30.060, 29.30.081, 29.30.085, 29.30.086, 29.30.095,
- 29.30.101, 29.30.111, 29.30.130, 29.36.210, 29.36.220, 29.36.230, 29.36.240,
- 29.36.250, 29.36.260, 29.36.270, 29.36.280, 29.36.290, 29.36.300, 29.36.310,
- 29.36.320, 29.36.340, 29.36.350, 29.36.360, 29.51.010, 29.51.125, 29.51.180,
- 29.51.190, 29.54.037, 29.48.010, 29.13.080, 29.51.240, 29.51.185, 29.48.030,
- 29.07.170, 29.48.035, 29.57.130, 29.48.020, 29.48.070, 29.48.090, 29.48.100,
- 29.51.150, 29.51.050, 29.51.060, 29.51.100, 29.51.070, 29.51.200, 29.54.018,
- 29.51.250, 29.54.010, 29.54.015, 29.07.180, 29.48.080, 29.48.045, 29.54.093,
- 29.51.115, 29.51.155, 29.45.010, 29.45.020, 29.45.030, 29.45.040, 29.45.050,
- 29.45.060, 29.45.065, 29.45.070, 29.45.080, 29.45.090, 29.45.100, 29.45.110,

29.45.120, 29.38.010, 29.38.020, 29.38.030, 29.38.040, 29.38.050, 29.38.060, 29.15.150, 29.18.010, 29.18.120, 29.18.200, 29.21.010, 29.21.015, 29.21.070, 29.21.410, 29.27.030, 29.27.050, 29.27.072, 29.27.074, 29.27.080, 29.27.100, 29.27.110, 29.19.010, 29.19.020, 29.19.030, 29.19.045, 29.19.055, 29.19.080, 29.82.010, 29.82.015, 29.82.021, 29.82.023, 29.82.025, 29.82.030, 29.82.040, 29.82.060, 29.82.080, 29.82.090, 29.82.100, 29.82.105, 29.82.110, 29.82.120, 29.82.130, 29.82.140, 29.82.160, 29.71.010, 29.71.020, 29.71.030, 29.71.040, 29.71.050, 29.27.140, 29.74.010, 29.74.020, 29.74.030, 29.74.040, 29.74.050, 29.74.060, 29.74.070, 29.74.080, 29.74.100, 29.74.110, 29.74.120, 29.74.130, 29.74.140, 29.74.150, 29.13.040, 29.62.180, 29.54.042, 29.54.050, 29.54.060, 29.54.097, 29.54.105, 29.54.121, 29.54.170, 29.51.175, 29.54.075, 29.54.085, 29.27.120, 29.62.030, 29.62.020, 29.54.025, 29.36.330, 29.62.040, 29.62.050, 29.62.080, 29.62.090, 29.62.100, 29.62.120, 29.62.130, 29.64.010, 29.64.015, 29.64.020, 29.64.030, 29.64.035, 29.64.040, 29.64.051, 29.64.060, 29.64.080, 29.64.090, 29.04.030, 29.65.010, 29.65.020, 29.65.040, 29.65.050, 29.65.055, 29.65.060, 29.65.070, 29.65.080, 29.65.090, 29.65.100, 29.65.120, 29.79.010, 29.79.015, 29.79.020, 29.79.030, 29.79.035, 29.79.040, 29.79.050, 29.79.060, 29.79.070, 29.79.080, 29.79.090, 29.79.100, 29.79.110, 29.79.115, 29.79.120, 29.79.140, 29.79.150, 29.79.160, 29.79.170, 29.79.180, 29.79.190, 29.79.200, 29.79.210, 29.79.230, 29.79.270, 29.79.280, 29.79.290, 29.79.300, 29.70.100, 29.15.026, 29.10.060, 29.04.140, 29.42.010, 29.42.020, 29.42.030, 29.42.040, 29.42.050, 29.42.070, 29.85.245, 29.82.210, 29.38.070, 29.85.275, 29.07.400, 29.07.405, 29.07.410, 29.85.249, 29.79.480, 29.82.220, 29.79.440, 29.82.170, 29.79.490, 29.15.080, 29.15.110, 29.79.500, 29.15.100, 29.85.040, 29.85.020, 29.51.020, 29.51.030, 29.51.221, 29.85.010, 29.85.110, 29.85.260, 29.85.051, 29.85.060, 29.85.070, 29.85.090, 29.85.210, 29.85.220, 29.85.240, 29.51.230, 29.51.215, 29.36.370, 29.85.100, 29.85.170, 29.85.225, 29.85.230, 29.91.010, 29.91.020, 29.91.030, 29.91.040, 29.91.050, and 29.91.060.

The code reviser shall correct any cross-references to the recodified sections.

NEW SECTION. Sec. 2402. RCW 29.13.023 and 29.13.024 are each recodified as sections in chapter 35.22 RCW.

NEW SECTION. Sec. 2403. EXPIRATION. RCW 29.04.250 and 2002 c 21 s 2 and section 245 of this act expire January 1, 2005.

NEW SECTION. Sec. 2404. REPEALER. The following acts or parts of acts are each repealed:

(1) RCW 9.81.100 (Public office—Candidate must file affidavit) and 1951 c 254 s 16;

(2) RCW 29.01.010 (City clerk) and 1965 c 9 s 29.01.010;

(3) RCW 29.01.020 (City council) and 1965 c 9 s 29.01.020;

(4) RCW 29.01.030 (City precinct) and 1965 c 9 s 29.01.030;

(5) RCW 29.01.040 (Constituency) and 1965 c 9 s 29.01.040;

(6) RCW 29.01.087 (Local voters' pamphlet) and 1984 c 106 s 2;

(7) RCW 29.01.150 (Rural precinct) and 1965 c 9 s 29.01.150;

(8) RCW 29.04.210 (Ballots, voting systems—Rules by secretary of state) and 1990 c 59 s 7;

(9) RCW 29.04.235 (Electronic facsimile documents—Rules) and 1991 c 186 s 2;

(10) RCW 29.07.100 (Registration assistance by city and town clerks) and 1994 c 57 s 14, 1971 ex.s. c 202 s 13, & 1965 c 9 s 29.07.100;

(11) RCW 29.07.115 (Registration records—Weekly transmittal) and 1994 c 57 s 15 & 1971 ex.s. c 202 s 23;

(12) RCW 29.07.120 (Registrar's cards—Weekly transmittal—Exemption) and 1999 c 298 s 5, 1994 c 57 s 16, 1971 ex.s. c 202 s 16, & 1965 c 9 s 29.07.120;

(13) RCW 29.07.240 (Computer file of voter registration records—Rules—Assistance) and 1974 ex.s. c 127 s 14;

(14) RCW 29.07.280 (Forwarding of forms to voter's county) and 1990 c 143 s 3;

(15) RCW 29.07.290 (Records—Correction, sorting, transmittal) and 1990 c 143 s 4;

(16) RCW 29.07.300 (Delivery of files to auditors—Address changes) and 1994 c 57 s 23 & 1990 c 143 s 5;

(17) RCW 29.07.310 (Driver licensing and voter registration—Duties of secretary of state) and 1990 c 143 s 10;

(18) RCW 29.07.320 (Driver licensing and voter registration—Funding) and 1990 c 143 s 11;

(19) RCW 29.07.420 (Designation of agencies providing registration services) and 1994 c 57 s 26;

(20) RCW 29.07.450 (Duties of secretary of state) and 1994 c 57 s 29;

(21) RCW 29.08.020 (Duties of county auditor—Application of remainder of title) and 1993 c 434 s 2;

(22) RCW 29.08.050 (Declaration and warning) and 1994 c 57 s 31 & 1993 c 434 s 5;

(23) RCW 29.08.070 (Form—Adoption, contents) and 1993 c 434 s 7;

(24) RCW 29.08.090 (Violations of chapter) and 1993 c 434 s 9;

(25) RCW 29.08.900 (Effective date—1993 c 434) and 1993 c 434 s 13;

(26) RCW 29.13.021 (First class commission cities with charters providing triennial elections) and 1983 c 3 s 43, 1979 ex.s. c 126 s 10, & 1965 c 9 s 29.13.021;

(27) RCW 29.13.060 (Elections in certain first class school districts) and 1996 c 202 s 1, 1991 c 363 s 32, 1990 c 33 s 563, & 1989 c 10 s 7;

(28) RCW 29.15.046 (Electronic filing—Rules) and 2002 c 140 s 3;

(29) RCW 29.15.240 (Rejection of ineligible persons) and 1993 c 1 s 7;

(30) RCW 29.15.800 (Rules by secretary of state) and 1990 c 59 s 97;

(31) RCW 29.19.900 (Severability—1989 c 4) and 1989 c 4 s 12;

(32) RCW 29.36.900 (Captions not law—2001 c 241) and 2001 c 241 s 26;

(33) RCW 29.51.173 (Effect of term limitations on write-in voting) and 1993 c 1 s 6;

(34) RCW 29.57.170 (Implementing rules) and 1985 c 205 s 13;

(35) RCW 29.62.010 (Rules for canvassing—Statement of returns—Resolving ties) and 1990 c 59 s 62 & 1965 c 9 s 29.62.010;

(36) RCW 29.62.015 (County canvassing board—Membership, delegation of authority, public meetings) and 1995 c 139 s 1;

(37) RCW 29.64.070 (Rules) and 1991 c 81 s 38 & 1965 c 9 s 29.64.070;

(38) RCW 29.64.900 (Short title—Construction) and 1965 c 9 s 29.64.900;

- (39) RCW 29.68.015 (United States house of representatives—Term limits) and 1993 c 1 s 4;
- (40) RCW 29.68.016 (United States senate—Term limits) and 1993 c 1 s 5;
- (41) RCW 29.68.120 (Vacancy in congress—Canvass of primary and special vacancy election—Certification of nominees) and 1985 c 45 s 6, 1983 c 3 s 46, 1973 2nd ex.s. c 36 s 7, & 1965 c 9 s 29.68.120;
- (42) RCW 29.74.090 (Election of convention delegates—Qualifications of voters) and 1965 c 9 s 29.74.090;
- (43) RCW 29.79.250 (Referendum bills by legislature—Serial numbering) and 1965 c 9 s 29.79.250;
- (44) RCW 29.81.270 (Deadlines) and 1999 c 260 s 7;
- (45) RCW 29.81.320 (Procedural rules) and 1999 c 260 s 12;
- (46) RCW 29.81A.900 (Effective date—1984 c 106) and 1984 c 106 s 14;
- (47) RCW 29.81A.901 (Severability—1984 c 106) and 1984 c 106 s 13;
- (48) RCW 29.91.900 (Transmission of copies of act—1986 ex.s. c 1) and 1986 ex.s. c 1 s 10;
- (49) RCW 29.91.901 (Referral to electorate—Ballot title—1986 ex.s. c 1) and 1986 ex.s. c 1 s 11;
- (50) RCW 29.98.050 (Emergency—1965 c 9) and 1965 c 9 s 29.98.050; and
- (51) RCW 43.01.015 (Governor, lieutenant governor—Terms limited) and 1993 c 1 s 2.

NEW SECTION. Sec. 2405. EFFECTIVE DATE. This act takes effect July 1, 2004.

Passed by the Senate April 22, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 112

[Substitute House Bill 1058]

FOSTER CHILDREN—EDUCATION

AN ACT Relating to educational attainment of children in foster care; adding new sections to chapter 74.13 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that the educational attainment of children in foster care is significantly lower than that of children not in foster care. The legislature finds that many factors influence educational outcomes for children in foster care, including the disruption of the educational process because of repeatedly changing schools.

The legislature recognizes the importance of educational stability for foster children, and encourages the ongoing efforts of the department of social and health services and the office of the superintendent of public instruction to improve educational attainment of children in foster care. It is the intent of the legislature that efforts continue such as the recruitment of foster homes in school districts with high rates of foster care placements, the development and dissemination of informational materials regarding the challenges faced by

children in foster care, and the expansion to other school districts of best practices identified in pilot projects.

NEW SECTION. Sec. 2. A new section is added to chapter 74.13 RCW to read as follows:

It is the policy of the state of Washington that, whenever practical and in the best interest of the child, children placed into foster care shall remain enrolled in the schools they were attending at the time they entered foster care.

NEW SECTION. Sec. 3. A new section is added to chapter 74.13 RCW to read as follows:

The administrative regions of the department shall develop protocols with the respective school districts in their regions specifying specific strategies for communication, coordination, and collaboration regarding the status and progress of foster children placed in the region, in order to maximize the educational continuity and achievement for foster children. The protocols shall include methods to assure effective sharing of information consistent with RCW 28A.225.330.

NEW SECTION. Sec. 4. A new section is added to chapter 74.13 RCW to read as follows:

(1) The department shall establish an oversight committee composed of staff from the children’s administration of the department, the office of the superintendent of public instruction, and advocacy agencies to develop strategies for maintaining foster children in the schools they were attending at the time they entered foster care.

(2) The duties of the oversight committee shall include, but are not limited to:

- (a) Developing strategies for school-based recruitment of foster homes;
- (b) Monitoring the progress of current pilot projects that assist foster children to continue attending the schools they were attending at the time they entered foster care;
- (c) Overseeing the expansion of the number of pilot projects;
- (d) Promoting the use of best practices, throughout the state, demonstrated by the pilot projects and other programs relating to maintaining foster children in the schools they were attending at the time they entered foster care; and
- (e) Informing the legislature of the status of efforts to maintain foster children in the schools they were attending at the time they entered foster care.

NEW SECTION. Sec. 5. A new section is added to chapter 74.13 RCW to read as follows:

The department shall work with the administrative office of the courts to develop protocols to ensure that educational stability is addressed during the shelter care hearing.

NEW SECTION. Sec. 6. A new section is added to chapter 74.13 RCW to read as follows:

The department shall perform the tasks provided in sections 2 through 5 of this act based on available resources.

- Passed by the House April 21, 2003.
- Passed by the Senate April 9, 2003.
- Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 112

[Substitute House Bill 2027]

CIGARETTES—DELIVERY

AN ACT Relating to seizing, shipping, and delivery of cigarettes through internet, telephonic, or other delivery services; amending RCW 70.155.010 and 82.24.130; reenacting and amending RCW 9A.82.010; adding a new section to chapter 70.155 RCW; and prescribing penalties.

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

Sec. 1. RCW 70.155.010 and 1993 c 507 s 2 are each amended to read as follows:

The definitions set forth in RCW 82.24.010 shall apply to RCW 70.155.020 through 70.155.130. In addition, for the purposes of this chapter, unless otherwise required by the context:

- (1) "Board" means the Washington state liquor control board.
- (2) "Delivery sale" means any sale of cigarettes to a consumer in the state where either: (a) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other online service; or (b) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state. A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed pursuant to chapter 82.24 RCW or a retailer pursuant to chapter 82.24 RCW is not a delivery sale.
- (3) "Delivery service" means any private carrier engaged in the commercial delivery of letters, packages, or other containers that requires the recipient of that letter, package, or container to sign to accept delivery.
- (4) "Minor" refers to an individual who is less than eighteen years old.
- ~~((3))~~ (5) "Public place" means a public street, sidewalk, or park, or any area open to the public in a publicly owned and operated building.
- ~~((4))~~ (6) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.
- ~~((5))~~ (7) "Sampler" means a person engaged in the business of sampling other than a retailer.
- ~~((6))~~ (8) "Sampling" means the distribution of samples to members of the general public in a public place.
- ~~((7))~~ (9) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.
- (10) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.
- (11) "Tobacco product" means a product that contains tobacco and is intended for human consumption.

NEW SECTION. Sec. 2. A new section is added to chapter 70.155 RCW to read as follows:

- (1) It is unlawful for a person who mails, ships, or otherwise delivers cigarettes to fail to:
 - (a) Verify the age of the receiver of the cigarettes upon delivery; and

(b) Obtain in writing, before the first delivery sale of cigarettes, verification of the receiver's address and that the receiver of the cigarettes is not a minor. The statement must also confirm that the purchaser understands: (i) That signing another person's name to the certification is a violation of RCW 9A.60.040(1)(a); (ii) that the sale of cigarettes to a minor is a violation of RCW 26.28.080; (iii) that the purchase of cigarettes by minors is a violation of RCW 70.155.080; and (iv) that he or she has the option to receive mailings from a tobacco company about tobacco products.

(2) It is unlawful for a person to mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless before the first delivery sale to the consumer that person:

(a) Either verifies the information contained in the certification provided by the prospective consumer in subsection (1) of this section against a commercially available data base, or obtains a photocopy of an officially issued identification containing the bearer's age, signature, and photograph. The only forms of identification that are acceptable as proof of age for the purchase for tobacco products are: (i) A liquor control authority card of identification issued by a state of the United States or a province of Canada, (ii) a driver's license, instruction permit, or identification card issued by a state of the United States or a province of Canada, (iii) a United States military identification card, (iv) a passport, or (v) a merchant marine identification card issued by the United States coast guard;

(b) Provides to the prospective consumer through electronic mail or other means a notice that meets the requirements of subsection (3) of this section; and

(c) In the case of an order for cigarettes pursuant to an advertisement on the internet, receives payment for the delivery sale from the prospective consumer by a credit card or debit card, or by check that has been issued in the prospective consumer's name.

(3) The notice required under subsection (2)(b) of this section must include:

(a) A prominent and clearly legible statement that cigarette sales to minors are illegal;

(b) A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a quarterly basis;

(c) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (1) of this section; and

(d) A prominent and clearly legible statement that cigarette sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to a delivery sale.

(4) It is unlawful for a person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale to fail to:

(a) Include as part of the bill of lading, or other shipping documents, a clear and conspicuous statement that states: "Cigarettes: Washington Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

(b) Contract only with private carriers who employ delivery agents who will verify the receiver of the cigarettes is not a minor upon delivery. The only forms of identification that are acceptable as proof of age for the purchase for tobacco

products are: (i) A liquor control authority card of identification issued by a state of the United States or a province of Canada, (ii) a driver's license, instruction permit, or identification card issued by a state of the United States or a province of Canada, (iii) a United States military identification card, (iv) a passport, or (v) a merchant marine identification card issued by the United States coast guard;

(c) Provide to the delivery service retained for the delivery sale evidence of full compliance with this section.

(5)(a) Before making delivery sales or mailings, shipping, or otherwise delivering cigarettes to a Washington address in connection with any sales, any person who mails, ships, or otherwise delivers cigarettes shall file with the board a statement setting forth the person's name, trade name, and the address of the person's principal place of business and any other place of business.

(b) Any person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall within fifteen days after the first of each month file with the board a report of all delivery sales made by the person within this state for the preceding month. The report shall show the name and address of the consumer to whom the cigarettes were sold, the kind and quality, and the date of delivery thereof.

(6)(a) Any person other than a delivery service who violates any of the provisions of this section is guilty of a class C felony punishable by up to five years in prison and a fine of ten thousand dollars, and payment of the cost of investigation and prosecution, including attorneys' fees.

(b) Any person other than a delivery service who commits a second or subsequent violation of this section is a class B felony punishable by up to ten years in prison and a fine of twenty thousand dollars, and payment of the cost of investigation and prosecution, including attorneys' fees.

(c) Any delivery service that violates any provision of this section shall be guilty of a gross misdemeanor punishable by up to one year in jail and a fine of five thousand dollars.

(7) Any person that fails to collect or remit to the department of revenue any tax required under chapter 82.24 RCW in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.

(8) For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board or any of its agents may inspect the books, documents, and records of any person who makes delivery sales or mailings, or ships or otherwise delivers cigarettes or retains another person to make delivery sales or mailings, or to ship or otherwise deliver cigarettes insofar as such books, documents, and/or records pertain to the financial transaction involved. If such a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the board or its agent, then the board or the attorney general may seek an order in superior court compelling such production of books, records, or documents.

Sec. 3. RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are each reenacted and amended to read as follows:

Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

(h) Child selling or child buying, as defined in RCW 9A.64.030;

(i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

(j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

(k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

(l) Extortionate extension of credit, as defined in RCW 9A.82.020;

(m) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

(n) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

(o) Collection of an unlawful debt, as defined in RCW 9A.82.045;

(p) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

(q) Trafficking in stolen property, as defined in RCW 9A.82.050;

(r) Leading organized crime, as defined in RCW 9A.82.060;

(s) Money laundering, as defined in RCW 9A.83.020;

(t) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

(u) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

(v) Promoting pornography, as defined in RCW 9.68.140;

(w) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

(x) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

(y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

(z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

(aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

(bb) A pattern of equity skimming, as defined in RCW 61.34.020;

(cc) Commercial telephone solicitation in violation of RCW 19.158.040(1);

(dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;

(ee) Unlawful practice of law, as defined in RCW 2.48.180;

(ff) Commercial bribery, as defined in RCW 9A.68.060;

(gg) Health care false claims, as defined in RCW 48.80.030;

(hh) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);

(ii) Improperly obtaining financial information, as defined in RCW 9.35.010; (~~oe~~)

(jj) Identity theft, as defined in RCW 9.35.020;

(kk) Unlawful shipment of cigarettes in violation of section 2(6) (a) or (b) of this act; or

(ll) Unlawful shipment of cigarettes in violation of RCW 82.24.110(2).

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time

the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

Sec. 4. RCW 82.24.130 and 1999 c 193 s 3 are each amended to read as follows:

(1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; and any container or package of cigarettes possessed or held for sale that does not comply with this chapter.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(d) All cigarettes sold, delivered, or attempted to be delivered in violation of section 2 of this act.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler or retailer, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband.

Passed by the House April 21, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 114

[Substitute House Bill 1943]

CIGARETTE STAMPS

AN ACT Relating to the regulation of counterfeit cigarettes and forfeiture: amending RCW 82.24.020, 82.24.030, 82.24.040, 82.24.050, 82.24.110, 82.24.130, 82.24.250, 82.24.260, and 82.24.500; adding a new section to chapter 82.24 RCW; and prescribing penalties.

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

Sec. 1. RCW 82.24.020 and 1994 sp.s. c 7 s 904 are each amended to read as follows:

(1) There is levied and there shall be collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession or distribution of all cigarettes, in an amount equal to the rate of eleven and one-half mills per cigarette.

(2) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to the rate of five and one-fourth mills per cigarette. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to the rate of ten mills per cigarette through June 30, 1994, eleven and one-fourth mills per cigarette for the period July 1, 1994, through June 30, 1995, twenty mills per cigarette for the period July 1, 1995, through June 30, 1996, and twenty and one-half mills per cigarette thereafter. All revenues collected during any month from this additional tax shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(4) Wholesalers (~~and retailers~~) subject to the payment of this tax may, if they wish, absorb one-half mill per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

(5) For purposes of this chapter, "possession" shall mean both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held.

Sec. 2. RCW 82.24.030 and 1995 c 278 s 2 are each amended to read as follows:

(1) In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department. The stamps must be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, (~~every person~~) only a wholesaler shall cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: PROVIDED, That where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

(3) Only wholesalers may purchase or obtain cigarette stamps. Wholesalers shall not sell or provide stamps to any other wholesaler or person.

(4) Each roll of stamps, or group of sheets, shall have a separate serial number, which shall be legible at the point of sale. The department of revenue shall keep records of which wholesaler purchases each roll or group of sheets. If the department of revenue permits wholesalers to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one wholesaler. The remainder of the roll or sheet, if any, shall either be retained for later purchases by the same wholesaler or destroyed.

(5) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

Sec. 3. RCW 82.24.040 and 1995 c 278 s 3 are each amended to read as follows:

(1) Except as authorized by this chapter, no person other than a licensed wholesaler shall possess in this state unstamped cigarettes.

(2) No wholesaler in this state may possess within this state unstamped cigarettes except that:

(a) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(b) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be

permitted to set aside, without affixing the stamps required by this chapter, such part of the wholesaler's stock as may be necessary for the conduct of the wholesaler's business in making sales to persons in another state or foreign country or to instrumentalities of the federal government. Such unstamped stock shall be kept separate and apart from stamped stock.

~~((2))~~ (3) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state or to a federal instrumentality, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the department, at Olympia, not later than the fifteenth day of the following calendar month. For failure to comply with the requirements of this section, the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed.

~~((3))~~ (4) Unstamped cigarettes possessed by a wholesaler under subsection (2) of this section that are transferred by the wholesaler to another facility of the wholesaler within the borders of Washington shall be transferred in compliance with RCW 82.24.250.

(5) Every wholesaler who is licensed by Washington state law shall sell cigarettes to retailers located in Washington only if the retailer has a current cigarette retailer's license or is an Indian tribal organization authorized to possess untaxed cigarettes under this chapter and the rules adopted by the department.

(6) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

Sec. 4. RCW 82.24.050 and 1995 c 278 s 4 are each amended to read as follows:

(1) No retailer in this state may possess unstamped cigarettes within this state ~~((except as provided in this chapter))~~ unless the person is also a wholesaler in possession of the cigarettes in accordance with RCW 82.24.040.

(2) A retailer may obtain cigarettes only from a wholesaler subject to the provisions of this chapter.

Sec. 5. RCW 82.24.110 and 1999 c 193 s 2 are each amended to read as follows:

(1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(e) To violate any of the provisions of this chapter;

(f) To violate any lawful rule made and published by the department of revenue or the board;

- (g) To use any stamps more than once;
- (h) To refuse to allow the department of revenue or its duly authorized agent, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;
- (i) ~~((Except as provided in this chapter,))~~ For any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;
- (j) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;
- (k) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;
- (l) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;
- (m) For any person to possess or transport in this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless: (i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is authorized by this chapter to possess unstamped cigarettes in this state;
- (n) To possess, sell, or transport within this state any container or package of cigarettes that does not comply with this chapter.
- (2) It is unlawful for any person knowingly or intentionally to possess or to transport in this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (a) Proper notice as required by RCW 82.24.250 has been given; (b) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (c) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state. Violation of this section shall be punished as a class C felony under Title 9A RCW.
- (3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to

the same extent as any wholesaler or retailer or any other person violating this chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 82.24 RCW to read as follows:

(1) It is unlawful for any person to knowingly manufacture, sell, or possess counterfeit cigarettes. A cigarette is "counterfeit" if:

(a) The cigarette or its packaging bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted or used by a manufacturer to identify its own cigarettes; and

(b) The cigarette is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person.

(2) Any person who violates the provisions of this section is guilty of a class C felony which is punishable by up to five years in prison and a fine of up to ten thousand dollars.

(3) Any person who is convicted of a second or subsequent violation of the provisions of this section is guilty of a class B felony which is punishable by up to ten years in prison and a fine of up to twenty thousand dollars.

Sec. 7. RCW 82.24.130 and 1999 c 193 s 3 are each amended to read as follows:

(1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; ~~((and))~~ any container or package of cigarettes possessed or held for sale that does not comply with this chapter; and any container or package of cigarettes that is manufactured, sold, or possessed in violation of section 6 of this act.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any

superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler (~~(or retailer)~~), licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband unless they are manufactured, sold, or possessed in violation of section 6 of this act.

Sec. 8. RCW 82.24.250 and 1997 c 420 s 7 are each amended to read as follows:

(1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by this chapter (~~(82-24 RCW)~~) to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by this chapter (~~(82-24 RCW)~~) to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by this chapter (~~(82-24 RCW)~~) to possess unstamped cigarettes" means:

(a) A wholesaler (~~(or retailer)~~), licensed under Washington state law;

(b) The United States or an agency thereof; and

(c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department.

(8) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

Sec. 9. RCW 82.24.260 and 1995 c 278 s 11 are each amended to read as follows:

(1) Other than:

(a) A ~~((person))~~ wholesaler required to be licensed under this chapter;

(b) A federal instrumentality with respect to sales to authorized military personnel; or

(c) An Indian tribal organization with respect to sales to enrolled members of the tribe,

a person who is in lawful possession of unstamped cigarettes and who intends to sell or otherwise dispose of the cigarettes shall pay, or satisfy its precollection obligation that is imposed by this chapter, the tax required by this chapter by remitting the tax or causing stamps to be affixed in the manner provided in rules adopted by the department.

(2) When stamps are required to be affixed, the person may deduct from the tax collected the compensation allowable under this chapter. The remittance or the affixing of stamps shall, in the case of cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be made at the same time and manner as required in RCW 82.24.250(7)(c).

(3) This section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

(4) Nothing in this section shall relieve a wholesaler ~~((or a retailer))~~ from the requirements of affixing stamps pursuant to RCW 82.24.040 and 82.24.050.

Sec. 10. RCW 82.24.500 and 1986 c 321 s 4 are each amended to read as follows:

No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter. A violation of this section is a ~~((misdemeanor))~~ class C felony.

Passed by the House April 21, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 115

[House Bill 1084]

AUTOMOBILE INSURANCE

AN ACT Relating to regulating automobile insurance; and amending RCW 48.22.005, 48.22.085, 48.22.090, 48.22.095, and 48.22.100.

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

Sec. 1. RCW 48.22.005 and 1993 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) "Automobile" means a passenger car as defined in RCW 46.04.382 registered or principally garaged in this state other than:

(a) A farm-type tractor or other self-propelled equipment designed for use principally off public roads;

(b) A vehicle operated on rails or crawler-treads;

(c) A vehicle located for use as a residence;

(d) A motor home as defined in RCW 46.04.305; or

(e) A moped as defined in RCW 46.04.304.

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

(3) "Income continuation benefits" means payments (~~of at least eighty-five percent of~~) for the insured's loss of income from work, because of bodily injury sustained by ~~((him or her))~~ the insured in ~~((the))~~ an automobile accident, less income earned during the benefit payment period. The combined weekly payment an insured may receive under personal injury protection coverage, worker's compensation, disability insurance, or other income continuation benefits may not exceed eighty-five percent of the insured's weekly income from work. The benefit payment period begins fourteen days after the date of the automobile accident and ends at the earliest of the following:

(a) The date on which the insured is reasonably able to perform the duties of his or her usual occupation;

(b) ~~((The expiration of not more than fifty-two weeks from the fourteenth day))~~ Fifty-four weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(4) "Insured automobile" means an automobile described on the declarations page of the policy.

(5) "Insured" means:

(a) The named insured or a person who is a resident of the named insured's household and is either related to the named insured by blood, marriage, or adoption, or is the named insured's ward, foster child, or stepchild; or

(b) A person who sustains bodily injury caused by accident while: (i) Occupying or using the insured automobile with the permission of the named insured; or (ii) a pedestrian accidentally struck by the insured automobile.

(6) "Loss of services benefits" means reimbursement for payment to others, not members of the insured's household, for expenses reasonably incurred for services in lieu of those the insured would usually have performed for his or her household without compensation, provided the services are actually rendered ~~((; and ending))~~. The maximum benefit is forty dollars per day. Reimbursement for loss of services ends the earliest of the following:

(a) The date on which the insured person is reasonably able to perform those services;

(b) ~~((The expiration of fifty-two weeks))~~ Fifty-two weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(7) "Medical and hospital benefits" means payments for all reasonable and necessary expenses incurred by or on behalf of the insured for injuries sustained as a result of an automobile accident for health care services provided by persons licensed under Title 18 RCW, including pharmaceuticals, prosthetic devices and eye glasses, and necessary ambulance, hospital, and professional nursing service. Medical and hospital benefits are payable for expenses incurred within three years from the date of the automobile accident.

(8) "Automobile liability insurance policy" means a policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage suffered by any person and arising out of the ownership, maintenance, or use of an insured automobile. An automobile liability policy does not include:

(a) Vendors single interest or collateral protection coverage;

(b) General liability insurance; or

(c) Excess liability insurance, commonly known as an umbrella policy, where coverage applies only as excess to an underlying automobile policy.

(9) "Named insured" means the individual named in the declarations of the policy and includes his or her spouse if a resident of the same household.

(10) "Occupying" means in or upon or entering into or alighting from.

(11) "Pedestrian" means a natural person not occupying a motor vehicle as defined in RCW 46.04.320.

(12) "Personal injury protection" means the benefits described in this section and RCW 48.22.085 through 48.22.100. Payments made under personal injury protection coverage are limited to the actual amount of loss or expense incurred.

Sec. 2. RCW 48.22.085 and 1993 c 242 s 2 are each amended to read as follows:

(1) No new automobile liability insurance policy or renewal of such an existing policy may be issued unless personal injury protection coverage ~~((benefits at limits established in this chapter for medical and hospital expenses, funeral expenses, income continuation, and loss of services sustained by an insured because of bodily injury caused by an automobile accident are))~~ is offered as an optional coverage.

(2) A named insured may reject, in writing, personal injury protection coverage and the requirements of subsection (1) of this section shall not apply. If a named insured ~~((has rejected))~~ rejects personal injury protection coverage~~((:));~~:

(a) That rejection ((shall be)) is valid and binding as to all levels of coverage and on all persons who might have otherwise been insured under such coverage((- If a named insured has rejected personal injury protection coverage, such coverage shall not be included)); and

(b) The insurer is not required to include personal injury protection coverage in any supplemental, renewal, or replacement policy unless a named insured subsequently requests such coverage in writing.

Sec. 3. RCW 48.22.090 and 1993 c 242 s 3 are each amended to read as follows:

~~((1) Personal injury protection coverage need not be provided for vendor's single interest policies, general liability policies, or other policies, commonly~~

known as umbrella policies, that apply only as excess to the automobile liability policy directly applicable to the insured motor vehicle.

~~(2) Personal injury protection coverage need not be provided.)~~ An insurer is not required to provide personal injury protection coverage to or on behalf of:

~~((a))~~ (1) A person who intentionally causes injury to himself or herself;

~~((b))~~ (2) A person who is injured while participating in a prearranged or organized racing or speed contest or in practice or preparation for such a contest;

~~((c))~~ (3) A person whose bodily injury is due to war, whether or not declared, or to an act or condition incident to such circumstances;

~~((d))~~ (4) A person whose bodily injury results from the radioactive, toxic, explosive, or other hazardous properties of nuclear material;

~~((e))~~ (5) The named insured or a relative while occupying a motor vehicle owned by the named insured or furnished for the named insured's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made;

~~((f))~~ (6) A relative while occupying a motor vehicle owned by the relative or furnished for the relative's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made; or

~~((g))~~ (7) An insured whose bodily injury results or arises from the insured's use of an automobile in the commission of a felony.

Sec. 4. RCW 48.22.095 and 1993 c 242 s 4 are each amended to read as follows:

Insurers providing automobile insurance policies must offer minimum personal injury protection coverage for each insured with ~~((maximum))~~ benefit limits as follows:

(1) Medical and hospital benefits of ten thousand dollars ~~((for expenses incurred within three years of the automobile accident))~~;

(2) ~~((Benefits for funeral expenses in an amount))~~ A funeral expense benefit of two thousand dollars;

(3) Income continuation benefits ~~((covering income losses incurred within one year after the date of the insured's injury in an amount))~~ of ten thousand dollars, subject to a limit of ~~((the lesser of))~~ two hundred dollars per week ~~((or eighty five percent of the weekly income. The combined weekly payment receivable by the insured under any workers' compensation or other disability insurance benefits or other income continuation benefit and this insurance may not exceed eighty five percent of the insured's weekly income))~~; and

(4) Loss of services benefits ~~((in an amount))~~ of five thousand dollars, subject to a limit of ~~((forty dollars per day not to exceed))~~ two hundred dollars per week~~((; and~~

~~((5) Payments made under personal injury protection coverage are limited to the amount of actual loss or expense incurred))~~.

Sec. 5. RCW 48.22.100 and 1993 c 242 s 5 are each amended to read as follows:

~~((In lieu of minimum coverage required under RCW 48.22.095))~~ If requested by a named insured, an insurer providing automobile liability insurance policies ~~((shall))~~ must offer ~~((and provide, upon request,))~~ personal injury protection coverage for each insured with benefit limits ~~((for each insured of))~~ as follows:

~~(1) ((Up to)) Medical and hospital benefits of thirty-five thousand dollars ((for medical and hospital benefits incurred within three years of the automobile accident));~~

~~(2) ((Up to)) A funeral expense benefit of two thousand dollars ((for funeral expenses incurred));~~

~~(3) ((Up to)) Income continuation benefits of thirty-five thousand dollars ((for one year's income continuation benefits)), subject to a limit of ~~((the lesser of))~~ seven hundred dollars per week ~~((or eighty-five percent of the weekly income))~~; and~~

~~(4) ((Up to forty dollars per day for loss of services benefits, for up to one year from the date of the automobile accident.~~

~~Payments made under personal injury protection coverage are limited to the amount of actual loss or expense incurred)) Loss of services benefits of fourteen thousand six hundred dollars.~~

Passed by the House February 10, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 116

[House Bill 1150]

INSURANCE—SINGLE PREMIUM CREDIT

AN ACT Relating to the sale of single premium credit insurance; and adding a new section to chapter 48.18 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.18 RCW to read as follows:

(1) For the purposes of this section:

(a) "Licensee" means every insurance agent, broker, or solicitor licensed under chapter 48.17 RCW.

(b) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple family dwelling of four or less units.

(c) "Single premium credit insurance" means credit insurance purchased with a single premium payment at inception of coverage.

(2) An insurer or licensee may not issue or sell any single premium credit insurance product in connection with a residential mortgage loan unless:

(a) The term of the single premium credit insurance policy is the same as the term of the loan;

(b) The debtor is given the option to buy credit insurance paid with monthly premiums; and

(c) The single premium credit insurance policy provides for a full refund of premiums to the debtor if the credit insurance is canceled within sixty days of the date of the loan.

(3) This section does not apply to residential mortgage loans if:

(a) The loan amount does not exceed ten thousand dollars, exclusive of fees;

- (b) The repayment term of the loan does not exceed five years; and
- (c) The term of the single premium credit insurance does not exceed the repayment term of the loan.

Passed by the House February 28, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 117

[Substitute House Bill 1128]

INSURANCE—PROPERTY—MALICIOUS HARASSMENT

AN ACT Relating to property insurance for victims of malicious harassment; and adding a new section to chapter 48.18 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.18 RCW to read as follows:

(1) For the purposes of this section:

(a) "Insured" means a current policyholder or a person or entity that is covered under the insurance policy.

(b) "Malicious harassment" has the same meaning as RCW 9A.36.080. Under this section, the perpetrator does not have to be identified for an act of malicious harassment to have occurred.

(c) "Underwriting action" means an insurer:

(i) Cancels or refuses to renew an insurance policy; or

(ii) Changes the terms or benefits in an insurance policy.

(2) This section applies to property insurance policies if the insured is:

(a) An individual;

(b) A religious organization;

(c) An educational organization; or

(d) Any other nonprofit organization that is organized and operated for religious, charitable, or educational purposes.

(3) An insurer may not take an underwriting action on a policy described in subsection (2) of this section because an insured has made one or more insurance claims for any loss that occurred during the preceding sixty months that is the result of malicious harassment. An insurer may take an underwriting action due to other factors that are not prohibited by this subsection.

(4) If an insured sustains a loss that is the result of malicious harassment, the insured must file a report with the police or other law enforcement authority within thirty days of discovery of the incident, and a law enforcement authority must determine that a crime has occurred. The report must contain sufficient information to provide an insurer with reasonable notice that the loss was the result of malicious harassment. The insured has a duty to cooperate with any law enforcement official or insurer investigation. For incidents of malicious harassment occurring prior to the effective date of this act, the insured must file the report within six months of the discovery of the incident.

(5) Annually, each insurer must report underwriting actions to the commissioner if the insurer has taken an underwriting action against any insured

who has filed a claim during the preceding sixty months that was the result of malicious harassment. The report must include the policy number, name of the insured, location of the property, and the reason for the underwriting action.

Passed by the House April 21, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 118

[House Bill 1815]

UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

AN ACT Relating to defining security account under the uniform transfer on death security registration act; and amending RCW 21.35.005.

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

Sec. 1. RCW 21.35.005 and 1993 c 287 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) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner, referred to as a "beneficiary."

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means (a) a reinvestment account associated with a security; a securities account with a broker; a cash balance in a brokerage account; or cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage

account, whether or not credited to the account before the owner's death; ~~((or))~~ (b) an investment management or custody account with a trust company or a trust division of a bank with trust powers, including the securities in the account; a cash balance in the account; and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or (c) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

Passed by the House March 11, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 119

[Engrossed Substitute House Bill 1844]

FINANCIAL FRAUD

AN ACT Relating to possession of instruments or equipment of financial fraud; amending RCW 9A.56.280, 9A.56.290, and 9A.60.020; reenacting and amending RCW 9A.82.010, 9.94A.515, and 9.94A.515; adding new sections to chapter 9A.56 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec. I.** A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of unlawful production of payment instruments if he or she prints or produces a check or other payment instrument in the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to manufacture or reproduce such payment instrument with such name, routing number, or account number.

(2)(a) A person is guilty of unlawful possession of payment instruments if he or she possesses two or more checks or other payment instruments, alone or in combination:

(i) In the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to possess such payment instrument, and with intent either to deprive the person of possession of such payment instrument or to commit theft, forgery, or identity theft; or

(ii) In the name of a fictitious person or entity, or with a fictitious routing number or account number of a person or entity, with intent to use the payment instruments to commit theft, forgery, or identity theft.

(b) (a)(i) of this subsection does not apply to:

(i) A person or financial institution that has lawful possession of a check, which is endorsed to that person or financial institution; and

(ii) A person or financial institution that processes checks for a lawful business purpose.

(3) A person is guilty of unlawful possession of a personal identification device if the person possesses a personal identification device with intent to use such device to commit theft, forgery, or identity theft. "Personal identification device" includes any machine or instrument whose purpose is to manufacture or print any driver's license or identification card issued by any state or the federal government, or any employee identification issued by any employer, public or private, including but not limited to badges and identification cards, or any credit or debit card.

(4) A person is guilty of unlawful possession of fictitious identification if the person possesses a personal identification card with a fictitious person's identification with intent to use such identification card to commit theft, forgery, or identity theft, when the possession does not amount to a violation of RCW 9.35.020.

(5) A person is guilty of unlawful possession of instruments of financial fraud if the person possesses a check-making machine, equipment, or software, with intent to use or distribute checks for purposes of defrauding an account holder, business, financial institution, or any other person or organization.

(6) This section does not apply to:

(a) A person, business, or other entity, that has lawful possession of a check, which is endorsed to that person, business, or other entity;

(b) A financial institution or other entity that processes checks for a lawful business purpose;

(c) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of that lawful business;

(d) A person who obtains another person's personal identification for the sole purpose of misrepresenting his or her age; and

(e) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification devices for investigative or educational purposes.

(7) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(8) A violation of this section is a class C felony.

NEW SECTION. Sec. 2. A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of possession of another's identification if the person knowingly possesses personal identification bearing another person's identity, when the person possessing the personal identification does not have the other person's permission to possess it, and when the possession does not amount to a violation of RCW 9.35.020.

(2) This section does not apply to:

(a) A person who obtains, by means other than theft, another person's personal identification for the sole purpose of misrepresenting his or her age;

(b) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of business;

(c) A person who finds another person's lost personal identification, does not intend to deprive the other person of the personal identification or to use it to commit a crime, and takes reasonably prompt steps to return it to its owner; and

(d) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification for investigative or educational purposes.

(3) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(4) A violation of this section is a gross misdemeanor.

Sec. 3. RCW 9A.56.280 and 1993 c 484 s 1 are each amended to read as follows:

As used in RCW 9A.56.280 (~~and~~), 9A.56.290, 9A.60.020, and sections 1 and 2 of this act, unless the context requires otherwise:

(1) "Cardholder" means a person to whom a credit card is issued or a person who otherwise is authorized to use a credit card.

(2) "Check" means a negotiable instrument that meets the definition of "check" under RCW 62A.3-104 or a blank form instrument that would meet the definition of "check" under RCW 62A.3-104 if it were completed and signed.

(3) "Credit card" means a card, plate, booklet, credit card number, credit card account number, or other identifying symbol, instrument, or device that can be used to pay for, or to obtain on credit, goods or services.

~~((3))~~ (4) "Credit card transaction" means a sale or other transaction in which a credit card is used to pay for, or to obtain on credit, goods or services.

~~((4))~~ (5) "Credit card transaction record" means a record or evidence of a credit card transaction, including, without limitation, a paper, sales draft, instrument, or other writing and an electronic or magnetic transmission or record.

~~((5))~~ (6) "Debit card" means a card used to obtain goods or services by a transaction that debits the cardholder's account, rather than extending credit.

(7) "Financial information" means financial information as defined in RCW 9.35.005.

(8) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized under state or federal law to do business and accept deposits in Washington.

~~((6))~~ (9) "Means of identification" means means of identification as defined in RCW 9.35.005.

(10) "Merchant" means a person authorized by a financial institution to honor or accept credit cards in payment for goods or services.

~~((7))~~ (11) "Person" means an individual, partnership, corporation, trust, or unincorporated association, but does not include a financial institution or its authorized employees, representatives, or agents.

(12) "Personal identification" means any driver's license, passport, or identification card actually or purportedly issued by any federal, state, local or foreign governmental entity; any credit card or debit card; or any employee identification card actually or purportedly issued by any employer, public or private, including but not limited to a badge or identification or access card.

Sec. 4. RCW 9A.56.290 and 1993 c 484 s 2 are each amended to read as follows:

(1) A person commits the crime of unlawful factoring of a credit card transaction if the person, with intent to commit fraud or theft against a cardholder, credit card issuer, or financial institution, causes any such party or parties to suffer actual monetary damages that in the aggregate exceed one thousand dollars, by:

(a) Presenting to or depositing with, or causing another to present to or deposit with, a financial institution for payment a credit card transaction record that is not the result of a credit card transaction between the cardholder and the person;

(b) Employing, soliciting, or otherwise causing a merchant or an employee, representative, or agent of a merchant to present to or deposit with a financial institution for payment a credit card transaction record that is not the result of a credit card transaction between the cardholder and the merchant; or

(c) Employing, soliciting, or otherwise causing another to become a merchant for purposes of engaging in conduct made unlawful by this section.

(2) Normal transactions conducted by or through airline reporting corporation-appointed travel agents or cruise-only travel agents recognized by passenger cruise lines are not considered factoring for the purposes of this section.

(3) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(4) Unlawful factoring of a credit card transaction is a class C felony.

Sec. 5. RCW 9A.60.020 and 1975-76 2nd ex.s. c 38 s 13 are each amended to read as follows:

(1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He falsely makes, completes, or alters a written instrument or;

(b) He possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged.

(2) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(3) Forgery is a class C felony.

Sec. 6. RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are each reenacted and amended to read as follows:

Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

(h) Child selling or child buying, as defined in RCW 9A.64.030;

(i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

(j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

(k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

(l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in section 1 of this act;

(m) Extortionate extension of credit, as defined in RCW 9A.82.020;

~~((m))~~ (n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

~~((n))~~ (o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

~~((o))~~ (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;

~~((p))~~ (q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

~~((q))~~ (r) Trafficking in stolen property, as defined in RCW 9A.82.050;

~~((r))~~ (s) Leading organized crime, as defined in RCW 9A.82.060;

~~((s))~~ (t) Money laundering, as defined in RCW 9A.83.020;

~~((t))~~ (u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

~~((u))~~ (v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

~~((v))~~ (w) Promoting pornography, as defined in RCW 9.68.140;

~~((w))~~ (x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

~~((x))~~ (y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

~~((y))~~ (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

~~((z))~~ (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

~~((aa))~~ (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

~~((bb))~~ (cc) A pattern of equity skimming, as defined in RCW 61.34.020;

~~((cc))~~ (dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);

~~((dd))~~ (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;

~~((ee))~~ (ff) Unlawful practice of law, as defined in RCW 2.48.180;

~~((ff))~~ (gg) Commercial bribery, as defined in RCW 9A.68.060;

~~((gg))~~ (hh) Health care false claims, as defined in RCW 48.80.030;

~~((hh))~~ (ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);

~~((ii))~~ (jj) Improperly obtaining financial information, as defined in RCW 9.35.010; or

~~((jj))~~ (kk) Identity theft, as defined in RCW 9.35.020.

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

Sec. 7. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 2, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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)
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Controlled Substance Homicide (RCW 69.50.415)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 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))
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 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 (when the offender has a criminal history in this state or any other state that includes a sex offense or serious violent offense or the Washington equivalent) (RCW 69.50.401(a)(1)(i))
- Possession of Ephedrine or any of its Salts or Isomers or Salts of Isomers, Pseudoephedrine or any of its Salts or Isomers or Salts of Isomers, Pressurized Ammonia Gas, or Pressurized Ammonia Gas Solution 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)
- Theft of Ammonia (RCW 69.55.010)
- 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)
- Civil Disorder Training (RCW 9A.48.120)
- 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 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))
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (except when the offender has a criminal history in this state or any other state that includes a sex offense or serious violent offense or the Washington equivalent) (RCW 69.50.401(a)(1)(i))
- 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 9A.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(3)(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)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(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
74.34.145)
- 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)
- 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)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW
79A.60.060)
- Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))

- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2)(a))
- 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, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- 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)
- Identity Theft 2 (RCW 9.35.020(2)(b))
- Improperly Obtaining Financial Information (RCW 9.35.010)

- 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))
- 1 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 2 (RCW 9A.56.070(2))

- 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 Possession of Fictitious Identification (section I of this act)
- Unlawful Possession of Instruments of Financial Fraud (section 1 of this act)
- Unlawful Possession of Payment Instruments (section 1 of this act)
- Unlawful Possession of a Personal Identification Device (section 1 of this act)
- Unlawful Production of Payment Instruments (section 1 of this act)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 8. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 7, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- 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)

- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- 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)
- Civil Disorder Training (RCW 9A.48.120)
- 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 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- 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(3)(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))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(b))
 - Child Molestation 3 (RCW 9A.44.089)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
 - 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 74.34.145)
 - 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)
 - 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)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2)(a))
- 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)
- 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, by being under the
influence of intoxicating liquor or
any drug, or by the operation or
driving of a vehicle in a reckless
manner (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(3)(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)
 - 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)
 - Malicious Injury to Railroad Property
(RCW 81.60.070)
 - 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))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- 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))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(2)(b))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- 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)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.070(2))
- 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 Possession of Fictitious Identification (section 1 of this act)
- Unlawful Possession of Instruments of Financial Fraud (section 1 of this act)
- Unlawful Possession of Payment Instruments (section 1 of this act)
- Unlawful Possession of a Personal Identification Device (section 1 of this act)

Unlawful Production of Payment
Instruments (section I of this act)

Unlawful Use of Food Stamps (RCW
9.9I.140 (2) and (3))

Vehicle Prowl 1 (RCW 9A.52.095)

NEW SECTION. Sec. 9. Section 7 of this act expires July 1, 2004.

NEW SECTION. Sec. 10. Section 8 of this act takes effect July 1, 2004.

Passed by the House March 18, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 120

[Engrossed House Bill 1037]

LITTER TAX—EXEMPTIONS

AN ACT Relating to exempting retail sales of food and beverages from the litter tax that are consumed indoors on the seller's premises; amending RCW 82.19.050; and declaring an emergency.

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

Sec. 1. RCW 82.19.050 and 2001 1st sp.s. c 9 s 7 are each amended to read as follows:

The litter tax imposed in this chapter does not apply to:

- (1) The manufacture or sale of products for use and consumption outside the state;
- (2) The value of products or gross proceeds of the sales exempt from tax under RCW 82.04.330; ((€))
- (3) The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298; or
- (4) The sale of food or beverages by retailers that are sold solely for consumption indoors on the seller's premises.

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 by the House March 18, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 121

[House Bill 1905]

TAXATION—PROPERTY—EXEMPTIONS

AN ACT Relating to the property taxation of organizations operated exclusively for art, scientific, or historical purposes or engaged in the production and performance of musical, dance, artistic, dramatic, or literary works; and amending RCW 84.36.060 and 84.36.805.

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

Sec. 1. RCW 84.36.060 and 1995 c 306 s 1 are each amended to read as follows:

(1) The following property shall be exempt from taxation:

~~((+))~~ (a) All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections; ~~(and)~~

(b) All the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance;

(c) All fire engines and other implements used for the extinguishment of fire, and the buildings used exclusively for their safekeeping, and for meetings of fire companies, as long as the property belongs to any city or town or to a fire company; and

(d) All property owned by humane societies in this state in actual use by the societies.

~~((a))~~ (2) To receive ~~(this)~~ an exemption under subsection (1)(a) or (b) of this section:

(a) An organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public.

(b) If the property is not currently being used for an exempt purpose but will be used for an exempt purpose within a reasonable period of time, the nonprofit organization, association, or corporation claiming the exemption must submit proof that a reasonably specific and active program is being carried out to construct, remodel, or otherwise enable the property to be used for an exempt purpose. The property does not qualify for an exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise. Proof of a specific and active program to build or remodel the property so it may be used for an exempt purpose may include, but is not limited to:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation toward an active program of construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling;

or

(iv) Building permits.

~~((c) Notwithstanding (b) of this subsection, a for-profit limited partnership created to provide facilities for the use of nonprofit art, scientific, or historical organizations qualifies for the exemption under (b) of this subsection through 1997 if the for-profit limited partnership otherwise qualifies under (b) of this subsection.~~

~~(2) All fire engines and other implements used for the extinguishment of fire, with the buildings used exclusively for the safekeeping thereof, and for meetings of fire companies, provided such properties belong to any city or town or to a fire company therein.)~~

~~(3) ((Property owned by humane societies in this state in actual use by such societies)) The use of property exempt under subsection (1)(a) or (b) of this section by entities not eligible for a property tax exemption under this chapter, except as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified if:~~

~~(a) The property is used by entities not eligible for a property tax exemption under this chapter for periods of not more than twenty-five days in the calendar year;~~

~~(b) The property is not used for pecuniary gain or to promote business activities for more than seven of the twenty-five days in the calendar year;~~

~~(c) The property is used for artistic, scientific, or historic purposes, for the production and performance of musical, dance, artistic, dramatic, or literary works, or for community gatherings or assembly, or meetings; and~~

~~(d) The amount of any rent or donations is reasonable and does not exceed maintenance and operation expenses created by the user.~~

Sec. 2. RCW 84.36.805 and 2001 1st sp.s. c 7 s 2 are each amended to read as follows:

(1) In order to qualify for an exemption under this chapter (~~and RCW 84.36.560~~), the nonprofit organizations, associations, or corporations must satisfy the conditions in this section.

(2) The property must be used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) (~~and~~), 84.36.037, and 84.36.060(1) (a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted.

(3) The property must be irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a

nonprofit organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption under this chapter or RCW 84.36.560 for leased property, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption.

(4) The facilities and services must be available to all regardless of race, color, national origin or ancestry.

(5) The organization, association, or corporation must be duly licensed or certified where such licensing or certification is required by law or regulation.

(6) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status. This subsection does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition in RCW 35.82.210(2)(a); or

(e) A housing authority established under RCW 35.82.300.

(7) The department shall have access to its books in order to determine whether the nonprofit organization, association, or corporation is exempt from taxes under this chapter ~~((and RCW 84.36.560))~~.

(8) This section does not apply to exemptions granted under RCW 84.36.020, 84.36.032, 84.36.250, and 84.36.260.

Passed by the House April 22, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 122

[Engrossed House Bill 1726]

EMPLOYER INDEBTEDNESS

AN ACT Relating to an employer's indebtedness to a deceased person for unpaid wages, labor, or services performed; and amending RCW 49.48.120.

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

Sec. 1. RCW 49.48.120 and 1981 c 333 s 2 are each amended to read as follows:

(1) If at the time of the death of any person, his or her employer is indebted to him or her for work, labor, and services performed, and no executor or administrator of his or her estate has been appointed, ~~((such))~~ the employer shall upon the request of the surviving spouse ~~((forthwith))~~ pay ~~((said))~~ the indebtedness~~(s;)~~ in ~~((such))~~ an amount as may be due not exceeding the sum of two thousand five hundred dollars, to the ~~((said))~~ surviving spouse, or if the decedent leaves no surviving spouse, then to the decedent's child or children, or if no children, then to the decedent's father or mother ~~((of said decedent:~~

~~PROVIDED, HOWEVER, That if by virtue of a community property agreement between))~~.

(2) In the event the decedent's employer is the state of Washington, then the amount of the indebtedness that can be paid under subsection (1) of this section shall not exceed ten thousand dollars. At the beginning of each biennium, the director of financial management may by administrative policy adjust the amount of indebtedness that can be paid under this subsection to levels not to exceed the percentage increase in the consumer price index for all urban consumers CPI-U for Seattle or a supcessor index for the revious biennium as calculated by the United States department of labor. Adjusted dollar amounts of indebtedness shall be rounded to the nearest five hundred dollar increment.

(3) If the decedent and the surviving spouse(~~(, which))~~ have entered into a community property agreement that meets the requirements of RCW 26.16.120, and the right to ((~~sueh~~)) the indebtedness became the sole property of the surviving spouse upon the death of the decedent, the employer shall pay to the surviving spouse the total of ((~~sueh~~)) the indebtedness, or that portion which is governed by the community property agreement, upon presentation of ((~~said~~)) the agreement accompanied by an affidavit or declaration of the surviving spouse stating that ((~~sueh~~)) the agreement was executed in good faith between the parties ((~~thereto~~)) and had not been rescinded by the parties ((~~prior to~~)) before the decedent's death ((of the decedent: PROVIDED FURTHER, That)).

(4) In all cases, the employer shall require proof of the claimant's relationship to the decedent by affidavit or declaration, and shall require the claimant to acknowledge receipt of ((~~sueh~~)) the payment in writing.

(5) Any payments made by an employer pursuant to the provisions of RCW 49.48.115 and 49.48.120 shall operate as a full and complete discharge of the employer's indebtedness to the extent of ((~~said~~)) the payment, and no employer shall thereafter be liable ((~~therefor~~)) to the decedent's estate, or the decedent's executor or administrator thereafter appointed.

(6) The employer may also pay the indebtedness upon presentation of an affidavit as provided in RCW 11.62.010.

Passed by the House March 11, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 123

[House Bill 1294]

CAMPAIGN FINANCE REPORTING—OUT-OF-STATE POLITICAL COMMITTEES

AN ACT Relating to campaign finance reporting by out-of-state political committees; amending RCW 42.17.090; and adding a new section to chapter 42.17 RCW.

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

Sec. 1. RCW 42.17.090 and 1993 c 256 s 6 are each amended to read as follows:

(1) Each report required under RCW 42.17.080 (1) and (2) shall disclose the following:

(a) The funds on hand at the beginning of the period;

(b) The name and address of each person who has made one or more contributions during the period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the campaign or in the case of a continuing political committee, the current calendar year: PROVIDED, That pledges in the aggregate of less than one hundred dollars from any one person need not be reported: PROVIDED FURTHER, That the income which results from a fund-raising activity conducted in accordance with RCW 42.17.067 may be reported as one lump sum, with the exception of that portion of such income which was received from persons whose names and addresses are required to be included in the report required by RCW 42.17.067: PROVIDED FURTHER, That contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum so long as the campaign treasurer maintains a separate and private list of the name, address, and amount of each such contributor: PROVIDED FURTHER, That the money value of contributions of postage shall be the face value of such postage;

(c) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together with the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(d) All other contributions not otherwise listed or exempted;

(e) The name and address of each candidate or political committee to which any transfer of funds was made, together with the amounts and dates of such transfers;

(f) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, and the amount, date, and purpose of each such expenditure. A candidate for state executive or state legislative office or the political committee of such a candidate shall report this information for an expenditure under one of the following categories, whichever is appropriate: (i) Expenditures for the election of the candidate; (ii) expenditures for nonreimbursed public office-related expenses; (iii) expenditures required to be reported under (e) of this subsection; or (iv) expenditures of surplus funds and other expenditures. The report of such a candidate or committee shall contain a separate total of expenditures for each category and a total sum of all expenditures. Other candidates and political committees need not report information regarding expenditures under the categories listed in (i) through (iv) of this subsection or under similar such categories unless required to do so by the commission by rule. The report of such an other candidate or committee shall also contain the total sum of all expenditures;

(g) The name and address of each person to whom any expenditure was made directly or indirectly to compensate the person for soliciting or procuring signatures on an initiative or referendum petition, the amount of such compensation to each such person, and the total of the expenditures made for this purpose. Such expenditures shall be reported under this subsection (1)(g) whether the expenditures are or are not also required to be reported under (f) of this subsection;

(h) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days;

(i) The surplus or deficit of contributions over expenditures;

(j) The disposition made in accordance with RCW 42.17.095 of any surplus funds; and

(k) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter(~~and~~

~~(l) Funds received from a political committee not otherwise required to report under this chapter (a "nonreporting committee"). Such funds shall be forfeited to the state of Washington unless the nonreporting committee has filed or within ten days following such receipt files with the commission a statement disclosing: (i) Its name and address; (ii) the purposes of the nonreporting committee; (iii) the names, addresses, and titles of its officers or if it has no officers, the names, addresses, and titles of its responsible leaders; (iv) the name, office sought, and party affiliation of each candidate in the state of Washington whom the nonreporting committee is supporting, and, if such committee is supporting the entire ticket of any party, the name of the party; (v) the ballot proposition supported or opposed in the state of Washington, if any, and whether such committee is in favor of or opposed to such proposition; (vi) the name and address of each person residing in the state of Washington or corporation which has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than twenty-five dollars to the nonreporting committee during the current calendar year, together with the money value and date of such contributions; (vii) the name and address of each person in the state of Washington to whom an expenditure was made by the nonreporting committee on behalf of a candidate or political committee in the aggregate amount of more than fifty dollars, the amount, date, and purpose of such expenditure, and the total sum of such expenditures; (viii) such other information as the commission may prescribe by rule, in keeping with the policies and purposes of this chapter. A nonreporting committee incurring an obligation to file additional reports in a calendar year may satisfy the obligation by filing with the commission a letter providing updating or amending information)).~~

(2) The treasurer and the candidate shall certify the correctness of each report.

NEW SECTION. Sec. 2. A new section is added to chapter 42.17 RCW to read as follows:

(1) An out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 shall report as required in this section when it makes an expenditure supporting or opposing a Washington state candidate or political committee. The committee shall file with the commission a statement disclosing:

(a) Its name and address;

(b) The purposes of the out-of-state committee;

(c) The names, addresses, and titles of its officers or, if it has no officers, the names, addresses, and the titles of its responsible leaders;

(d) The name, office sought, and party affiliation of each candidate in the state of Washington whom the out-of-state committee is supporting or opposing and, if such committee is supporting or opposing the entire ticket of any party, the name of the party;

(e) The ballot proposition supported or opposed in the state of Washington, if any, and whether such committee is in favor of or opposed to such proposition;

(f) The name and address of each person residing in the state of Washington or corporation which has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than twenty-five dollars to the out-of-state committee during the current calendar year, together with the money value and date of such contributions;

(g) The name and address of each person in the state of Washington to whom an expenditure was made by the out-of-state committee with respect to a candidate or political committee in the aggregate amount of more than fifty dollars, the amount, date, and purpose of such expenditure, and the total sum of such expenditures; and

(h) Such other information as the commission may prescribe by rule in keeping with the policies and purposes of this chapter.

(2) Each statement shall be filed no later than the twentieth day of the month following any month in which a contribution or other expenditure reportable under subsection (1) of this section is made. An out-of-state committee incurring an obligation to file additional statements in a calendar year may satisfy the obligation by timely filing reports that supplement previously filed information.

(3) A political committee required to file campaign reports with the federal election commission or its successor is exempt from reporting under this section.

Passed by the House March 10, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 124

[Engrossed Substitute House Bill 1845]

PUBLIC DISCLOSURE—EXEMPTIONS

AN ACT Relating to exempting bank account, social security, and credit card numbers from public disclosure; and reenacting and amending RCW 42.17.310.

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

Sec. 1. RCW 42.17.310 and 2002 c 335 s 1, 2002 c 224 s 2, 2002 c 205 s 4, and 2002 c 172 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 or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(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 18.130.040 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 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).

(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 or governed by other 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.

(uu) 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.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(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 by the House April 21, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 125

[Substitute House Bill 1189]

PUBLIC HOSPITAL DISTRICTS—POWERS

AN ACT Relating to public hospital district recruitment and training; and amending RCW 70.44.060.

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

Sec. 1. RCW 70.44.060 and 2001 c 76 s 1 are each amended to read as follows:

All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities

located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a

single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To ~~((make contracts,))~~ employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee

retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter.

Passed by the House February 12, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 126

[Substitute House Bill 1213]

BOARDS, COMMISSIONS—ELIMINATION

AN ACT Relating to the elimination of boards and commissions; amending RCW 79A.05.385, 79A.05.400, 79A.05.410, 79A.25.800, and 79A.25.820; creating new sections; repealing RCW 41.05.150, 43.175.010, 43.175.020, 43.175.901, 79A.05.420, and 79A.25.810; providing an effective date; providing a contingent expiration date; and declaring an emergency.

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

PART 1

HEALTH CARE POLICY TECHNICAL ADVISORY COMMITTEE

NEW SECTION. Sec. 101. RCW 41.05.150 (Health care policy technical advisory committee) and 1988 c 107 s 14 are each repealed.

PART 2

GOVERNOR'S SMALL BUSINESS IMPROVEMENT COUNCIL

NEW SECTION. Sec. 201. The following acts or parts of acts are each repealed:

- (1) RCW 43.175.010 (Governor's small business improvement council—Established—Membership—Travel expenses—Staff support and administrative assistance) and 1987 c 348 s 6, 1985 c 466 s 62, & 1984 c 282 s 7;
- (2) RCW 43.175.020 (Duties) and 1998 c 245 s 53, 1987 c 348 s 7, 1985 c 466 s 63, & 1984 c 282 s 8; and
- (3) RCW 43.175.901 (Severability—1984 c 282) and 1984 c 282 s 17.

PART 3

REBUILDING FAMILIES ADVISORY COMMITTEE

NEW SECTION. Sec. 301. By July 1, 2003, the secretary of the department of corrections shall abolish the rebuilding families advisory committee.

**PART 4
INDEPENDENT LIVING ADVISORY COMMITTEE**

NEW SECTION. **Sec. 401.** By July 1, 2003, the director of the department of services for the blind shall abolish the independent living advisory committee.

**PART 5
OCEAN SPOT SHRIMP EMERGING FISHERY ADVISORY BOARD**

NEW SECTION. **Sec. 501.** By July 1, 2003, the director of the department of fish and wildlife shall abolish the ocean spot shrimp emerging fishery advisory board.

**PART 6
WATER TRAIL ADVISORY COMMITTEE**

Sec. 601. RCW 79A.05.385 and 1993 c 182 s 2 are each amended to read as follows:

In addition to its other powers, duties, and functions, the commission may:

(1) Plan, construct, and maintain suitable facilities for water trail activities on lands administered or acquired by the commission or as authorized on lands administered by tribes or other public agencies or private landowners by agreement.

(2) Provide and issue, upon payment of the proper fee, with the assistance of those authorized agents as may be necessary for the convenience of the public, water trail permits to utilize designated water trail facilities. The commission may(~~, after consultation with the water trail advisory committee,~~) adopt rules authorizing reciprocity of water trail permits provided by another state or Canadian province, but only to the extent that a similar exemption or provision for water trail permits is issued by that state or province.

(3) Compile, publish, distribute, and charge a fee for maps or other forms of public information indicating areas and facilities suitable for water trail activities.

(4) Contract with a public agency, private entity, or person for the actual conduct of these duties.

(5) Work with individuals or organizations who wish to volunteer their time to support the water trail recreation program.

Sec. 602. RCW 79A.05.400 and 1993 c 182 s 5 are each amended to read as follows:

A person may not participate as a user of the water trail recreation program without first obtaining a water trail permit. A person must renew this permit on an annual basis in order to continue to participate as a user of the program. The fee for the issuance of the statewide water trail permit for each year shall be determined by the commission (~~(after consultation with the water trail advisory committee)~~). All statewide water trail permits shall expire on the last day of December of the year for which the permit is issued.

Sec. 603. RCW 79A.05.410 and 1993 c 182 s 7 are each amended to read as follows:

The commission may(~~(, after consultation with the water trail advisory committee,)~~) adopt rules to administer the water trail program and facilities on areas owned or administered by the commission. Where water trail facilities administered by other public or private entities are incorporated into the water trail system, the rules adopted by those entities shall prevail. The commission is not responsible or liable for enforcement of these alternative rules.

NEW SECTION. Sec. 604. RCW 79A.05.420 (Water trail advisory committee) and 2000 c 11 s 4I, 1994 c 264 s 21, & 1993 c 182 s 9 are each repealed.

PART 7

COMMUNITY OUTDOOR ATHLETIC FIELDS ADVISORY COUNCIL

Sec. 701. RCW 79A.25.800 and 2000 c 11 s 80 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 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).)~~)

Sec. 702. RCW 79A.25.820 and 2000 c 11 s 81 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 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.

NEW SECTION. Sec. 703. RCW 79A.25.810 (Community outdoor athletic fields advisory council) and 2001 c 245 s 1 & 1998 c 264 s 2 are each repealed.

**PART 8
ARTHRITIS ADVISORY GROUP**

NEW SECTION. Sec. 801. By July 1, 2003, the secretary of the department of health shall abolish the arthritis advisory group.

**PART 9
COMMITTEE ON TAXATION AND
ADVISORY GROUP TO THE COMMITTEE ON TAXATION**

NEW SECTION. Sec. 901. By July 1, 2003, the director of revenue shall abolish the committee on taxation and the advisory group to the committee on taxation created by section 137(1), chapter 371, Laws of 2002.

**PART 10
MISCELLANEOUS**

NEW SECTION. Sec. 1001. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 1002. Sections 701 and 702 of this act expire one year after RCW 82.14.0494 expires.

NEW SECTION. Sec. 1003. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the House April 21, 2003.
Passed by the Senate April 16, 2003.
Approved by the Governor May 7, 2003.
Filed in Office of Secretary of State May 7, 2003.

CHAPTER 127

[House Bill 1786]

MOBILE HOME LANDLORD-TENANT ACT

AN ACT Relating to the mobile home landlord-tenant act; and amending RCW 59.20.030, 59.20.070, 59.20.073, and 59.20.080.

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

Sec. I. RCW 59.20.030 and 1999 c 359 s 2 are each amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home, manufactured home, or park model owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(3) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(4) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

(5) "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(6) "Mobile home park" or "manufactured housing community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes~~((s))~~, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(7) "Mobile home park cooperative" or "manufactured housing cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(8) "Mobile home park subdivision" or "manufactured housing subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes, manufactured homes, or park models in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(9) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation ~~((and habitation))~~ and is used as a primary residence;

(10) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

(11) "Tenant" means any person, except a transient, who rents a mobile home lot;

(12) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence;

(13) "Occupant" means any person, including a live-in care provider, other than a tenant, who occupies a mobile home, manufactured home, or park model and mobile home lot.

Sec. 2. RCW 59.20.070 and 1999 c 359 s 6 are each amended to read as follows:

A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home, manufactured home, or park model within a park or require the removal of the mobile home, manufactured home, or park model from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073;

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural improvements on a mobile home space: **PROVIDED**, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement. Door-to-door solicitation does not include public officials or candidates for public office meeting or distributing information to tenants in accordance with subsection (4) of this section;

(3) Prohibit meetings by tenants of the mobile home park to discuss mobile home living and affairs, including political caucuses or forums for or speeches of public officials or candidates for public office, or meetings of organizations that represent the interest of tenants in the park, held in any of the park community or recreation halls if these halls are open for the use of the tenants, conducted at reasonable times and in an orderly manner on the premises, nor penalize any tenant for participation in such activities;

(4) Prohibit a public official or candidate for public office from meeting with or distributing information to tenants in their individual mobile homes, manufactured homes, or park models, nor penalize any tenant for participating in these meetings or receiving this information;

(5) Evict a tenant, terminate a rental agreement, decline to renew a rental agreement, increase rental or other tenant obligations, decrease services, or

modify park rules in retaliation for any of the following actions on the part of a tenant taken in good faith:

(a) Filing a complaint with any state, county, or municipal governmental authority relating to any alleged violation by the landlord of an applicable statute, regulation, or ordinance;

(b) Requesting the landlord to comply with the provision of this chapter or other applicable statute, regulation, or ordinance of the state, county, or municipality;

(c) Filing suit against the landlord for any reason;

(d) Participation or membership in any homeowners association or group;

(6) Charge to any tenant a utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant's utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs;

(7) Remove or exclude a tenant from the premises unless this chapter is complied with or the exclusion or removal is under an appropriate court order; or

(8) Prevent the entry or require the removal of a mobile home, manufactured home, or park model for the sole reason that the mobile home has reached a certain age. Nothing in this subsection shall limit a landlords' right to exclude or expel a mobile home, manufactured home, or park model for any other reason, including but not limited to, ~~((fire and safety concerns provided such))~~ failure to comply with fire, safety, and other provisions of local ordinances and state laws relating to mobile homes, manufactured homes, and park models, as long as the action conforms to this chapter ((59.20 RCW)) or any other relevant statutory provision.

Sec. 3. RCW 59.20.073 and 1999 c 359 s 7 are each amended to read as follows:

(1) Any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.

(2) A tenant who sells a mobile home, manufactured home, or park model within a park shall notify the landlord in writing of the date of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer in writing of the provisions of this section. The tenant shall verify in writing to the landlord payment of all taxes, rent, and reasonable expenses due on the mobile home, manufactured home, or park model and mobile home lot.

(3) The landlord shall notify the selling tenant, in writing, of a refusal to permit transfer of the rental agreement at least seven days in advance of such intended transfer.

(4) The landlord may require the mobile home, manufactured home, or park model to meet applicable fire and safety standards if a state or local agency responsible for the enforcement of fire and safety standards has issued a notice of violation of those standards to the tenant and those violations remain uncorrected. Upon correction of the violation to the satisfaction of the state or local agency responsible for the enforcement of that notice of violation, the landlord's refusal to permit the transfer is deemed withdrawn.

(5) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any

new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(6) Failure to notify the landlord in writing, as required under subsection (2) of this section; or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement; or failure of the current or new tenant to obtain written approval of the landlord for assignment of the rental agreement, shall be grounds for disapproval of such transfer.

Sec. 4. RCW 59.20.080 and 1999 c 359 s 10 are each amended to read as follows:

(1) A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: PROVIDED, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, manufactured homes, or park models or mobile home, manufactured homes, or park model living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes, manufactured homes, or park models or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "criminal activity." "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants. A park owner seeking to evict a tenant or occupant under this subsection need not produce evidence of a criminal conviction, even if the alleged misconduct constitutes a criminal offense. Notice from a law

enforcement agency of criminal activity constitutes sufficient grounds, but not the only grounds, for an eviction under this subsection. Notification of the seizure of illegal drugs under RCW 59.20.155 is evidence of criminal activity and is grounds for an eviction under this subsection. The requirement that any tenant or occupant register as a sex offender under RCW 9A.44.130 is grounds for eviction under this subsection. If criminal activity is alleged to be a basis of termination, the park owner may proceed directly to an unlawful detainer action;

(g) The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

(h) If the landlord serves a tenant three fifteen-day notices within a twelve-month period to comply or vacate for failure to comply with the material terms of the rental agreement or park rules. The applicable twelve-month period shall commence on the date of the first violation;

(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including this chapter (~~59.20 RCW~~). The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(j) The tenant engages in disorderly or substantially annoying conduct upon the park premises that results in the destruction of the rights of others to the peaceful enjoyment and use of the premises. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(k) The tenant creates a nuisance that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to cease the conduct that constitutes a nuisance immediately. The notice must state that failure to cease the conduct will result in termination of the tenancy and that the tenant shall vacate the premises in five days;

(l) Any other substantial just cause that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days; or

(m) Failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation, after service of a five-day notice to comply or vacate.

(2) Within five days of a notice of eviction as required by subsection (1)(a) of this section, the landlord and tenant shall submit any dispute to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section. It is a defense to an eviction under subsection (1)(a) of this section that a landlord did not participate in the mediation process in good faith.

(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks. This chapter governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park.

Passed by the House April 21, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 128

[Substitute House Bill 1061]

APPRENTICES—DEGREE EARNING

AN ACT Relating to creating associate degree pathways for apprentices; adding a new section to chapter 49.04 RCW; adding a new section to chapter 28B.50 RCW; and creating new sections.

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

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

(1) Apprenticeships are very rigorous and highly structured programs with specific academic and work training requirements;

(2) There is a misperception that apprenticeships are only for noncollege bound students; and

(3) The state should expand opportunities for individuals to progress from an apprenticeship to college by creating pathways that build on the apprenticeship experience and permit apprentices to earn an associate degree.

NEW SECTION. **Sec. 2.** A new section is added to chapter 49.04 RCW to read as follows:

(1) An apprenticeship committee may recommend to its community or technical college partner or partners that an associate degree pathway be developed for the committee's program.

(2) In consultation with the state board for community and technical colleges, the apprenticeship committee and the college or colleges involved with the program shall consider the extent apprentices in the program are likely to pursue an associate degree and the extent a pathway could reduce redundancy of course requirements between the apprenticeship and a degree.

(3) If the apprenticeship committee and the college or colleges involved with the program determine that a pathway would be beneficial for apprentices and assist them in obtaining an associate degree, the apprenticeship committee may request that a pathway be established as provided in section 3 of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.50 RCW to read as follows:

(1) At the request of an apprenticeship committee pursuant to section 2 of this act, the community or technical college or colleges providing apprentice-related and supplemental instruction for an apprenticeship program shall develop an associate degree pathway for the apprentices in that program, if the necessary resources are available.

(2) In developing a degree program, the community or technical college or colleges shall ensure, to the extent possible, that related and supplemental

instruction is credited toward the associate degree and that related and supplemental instruction and other degree requirements are not redundant.

(3) If multiple community or technical colleges provide related and supplemental instruction for a single apprenticeship committee, the colleges shall work together to the maximum extent possible to create consistent requirements for the pathway.

NEW SECTION. Sec. 4. (1) The state board for community and technical colleges shall convene a work group to examine current laws, administrative rules, and practices regarding related and supplemental instruction for apprentices that is provided by community and technical colleges.

(2) The objectives of the work group shall be to improve coordination of related and supplemental instruction by apprenticeship committees and community and technical colleges and remove or reduce barriers for apprentices to earn associate degrees. The work group shall develop common standards for when it is appropriate to make related and supplemental instruction courses graded rather than ungraded courses and clarify the standards for tuition waivers for related and supplemental instruction courses.

(3) The work group shall include, but not be limited to, representatives from the state board for community and technical colleges, the higher education coordinating board, the state apprenticeship council, the department of labor and industries, local apprenticeship committees, and community and technical colleges.

(4) The work group shall report its findings and recommendations to the legislature, including recommendations for legislative action if necessary, by December 15, 2003.

Passed by the House April 21, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 129

[Engrossed House Bill 1403]

EXCEPTIONAL FACULTY AWARDS PROGRAM

AN ACT Relating to exceptional faculty award grants; and amending RCW 28B.50.839 and 28B.50.837.

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

Sec. 1. RCW 28B.50.839 and 1994 c 234 s 3 are each amended to read as follows:

(1) In consultation with eligible community and technical colleges, the college board shall set priorities and guidelines for the program.

(2) ~~((Under this section, a college shall not receive more than four faculty grants in twenty-five thousand dollar increments, with a maximum total of one hundred thousand dollars per campus in any biennium.~~

(3)) All community and technical colleges and their foundations shall be eligible for matching trust funds. When they can match the state funds with equal cash donations from private sources, institutions and foundations may apply to the college board for grants from the fund in ~~((twenty-five))~~ ten

thousand dollar increments up to a maximum ~~((of one hundred thousand dollars when they can match the state funds with equal cash donations from private sources, except that in the initial year of the program, no college or foundation may receive more than one grant until every college or its foundation has received one grant))~~ set by the college board. These donations shall be made specifically to the exceptional faculty awards program and deposited by the institution or foundation in a local endowment fund or a foundation's fund. Otherwise unrestricted gifts may be deposited in the endowment fund by the institution or foundation.

~~((4))~~ (3) Once sufficient private donations are received by the institution or foundation, the institution shall inform the college board and request state matching funds. The college board shall evaluate the request for state matching funds based on program priorities and guidelines. The college board may ask the state treasurer to release the state matching funds to a local endowment fund established by the institution or a foundation's fund established by a foundation for each faculty award created.

~~((5))~~ (4) A college, by action of its board of trustees, may transfer those exceptional faculty award funds accumulated in its local endowment fund between July 1, 1991, and July 25, 1993, to its foundation's local endowment fund established as provided in subsection ~~((3))~~ (2) of this section.

Sec. 2. RCW 28B.50.837 and 2002 c 371 s 902 are each amended to read as follows:

(1) The Washington community and technical college exceptional faculty awards program is established. The program shall be administered by the college board. The college faculty awards trust fund hereby created shall be administered by the state treasurer.

(2) Funds appropriated by the legislature for the community and technical college exceptional faculty awards program shall be deposited in the college faculty awards trust fund. At the request of the college board, the treasurer shall release the state matching funds to the local endowment fund of the college or its foundation. No appropriation is necessary for the expenditure of moneys from the fund. ~~((During the 2001-2003 fiscal biennium, the legislature may appropriate funds from the college faculty awards trust fund for the purposes of the settlement costs of the Mader v. State litigation regarding retirement contributions on behalf of part-time faculty.))~~ Expenditures from the fund may be used solely for the exceptional faculty awards program.

Passed by the House April 21, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 130

[Engrossed Substitute House Bill 2076]

HIGHER EDUCATION COORDINATING BOARD

AN ACT Relating to roles and responsibilities of the higher education coordinating board; amending RCW 28B.80.330, 28B.80.340, 28B.80.610, and 28B.50.090; adding a new section to chapter 28B.80 RCW; creating new sections; and providing an expiration date.

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

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

(a) At the time the higher education coordinating board was created in 1985, the legislature wanted a board with a comprehensive mission that included planning, budget and program review authority, and program administration;

(b) Since its creation, the board has achieved numerous accomplishments, including proposals leading to creation of the branch campus system, and has made access and affordability of higher education a consistent priority;

(c) However, higher education in Washington state is currently at a crossroads. Demographic, economic, and technological changes present new and daunting challenges for the state and its institutions of higher education. As the state looks forward to the future, the legislature, the governor, and institutions need a common strategic vision to guide planning and decision making.

(2) Therefore, it is the legislature's intent to reaffirm and strengthen the strategic planning role of the higher education coordinating board. It is also the legislature's intent to examine options for reassigning or altering other roles and responsibilities to enable the board to place priority and focus on planning and coordination.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.80 RCW to read as follows:

(1) The board shall develop a statewide strategic master plan for higher education that proposes a vision and identifies goals and priorities for the system of higher education in Washington state. The board shall also specify strategies for maintaining and expanding access, affordability, quality, efficiency, and accountability among the various institutions of higher education.

(2) In developing the statewide strategic master plan for higher education, the board shall collaborate with the four-year institutions of higher education including the council of presidents, the community and technical college system, and, when appropriate, the work force training and education coordinating board, the superintendent of public instruction, and the independent higher education institutions. The board shall also seek input from students, faculty organizations, community and business leaders in the state, members of the legislature, and the governor.

(3) As a foundation for the statewide strategic master plan for higher education, the board shall develop and establish role and mission statements for each of the four-year institutions of higher education and the community and technical college system. The board shall determine whether certain major lines of study or types of degrees, including applied degrees or research-oriented degrees, shall be assigned uniquely to some institutions or institutional sectors in order to create centers of excellence that focus resources and expertise.

(4) In assessing needs of the state's higher education system, the board may consider and analyze the following information:

(a) Demographic, social, economic, and technological trends and their impact on service delivery;

(b) The changing ethnic composition of the population and the special needs arising from those trends;

(c) Business and industrial needs for a skilled work force;

(d) College attendance, retention, transfer, and dropout rates;

(e) Needs and demands for basic and continuing education and opportunities for lifelong learning by individuals of all age groups; and

(f) Needs and demands for access to higher education by placebound students and individuals in heavily populated areas underserved by public institutions.

(5) The statewide strategic master plan for higher education shall include, but not be limited to, the following:

(a) Recommendations based on enrollment forecasts and analysis of data about demand for higher education, and policies and actions to meet those needs;

(b) State or regional priorities for new or expanded degree programs or off-campus programs, including what models of service delivery may be most cost-effective;

(c) Recommended policies or actions to improve the efficiency of student transfer and graduation or completion;

(d) State or regional priorities for addressing needs in high-demand fields where enrollment access is limited and employers are experiencing difficulty finding enough qualified graduates to fill job openings;

(e) Recommended tuition and fees policies and levels; and

(f) Priorities and recommendations on financial aid.

(6) The board shall present the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education in a way that provides guidance for institutions, the governor, and the legislature to make further decisions regarding institution-level plans, policies, legislation, and operating and capital funding for higher education. In the statewide strategic master plan for higher education, the board shall recommend specific actions to be taken and identify measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities.

(7) Every four years by December 15th, beginning December 15, 2003, the board shall submit an interim statewide strategic master plan for higher education to the governor and the legislature. The interim plan shall reflect the expectations and policy directions of the legislative higher education and fiscal committees, and shall provide a timely and relevant framework for the development of future budgets and policy proposals. The legislature shall, by concurrent resolution, approve or recommend changes to the interim plan, following public hearings. The board shall submit the final plan, incorporating legislative changes, to the governor and the legislature by June of the year in which the legislature approves the concurrent resolution. The plan shall then become state higher education policy unless legislation is enacted to alter the policies set forth in the plan.

Sec. 3. RCW 28B.80.330 and 1997 c 369 s 10 are each amended to read as follows:

The board shall perform the following planning duties in consultation with the four-year institutions including the council of presidents, the community and technical college system, and when appropriate the work force training and education coordinating board, the superintendent of public instruction, and the independent higher educational institutions:

~~(1) (Develop and establish role and mission statements for each of the four-year institutions and for the community and technical college system;~~

~~(2) Identify the state's higher education goals, objectives, and priorities;~~

~~(3) Prepare a comprehensive master plan which includes but is not limited to:~~

~~(a) Assessments of the state's higher education needs. These assessments may include, but are not limited to: The basic and continuing needs of various age groups; business and industrial needs for a skilled work force; analyses of demographic, social, and economic trends; consideration of the changing ethnic composition of the population and the special needs arising from such trends; college attendance, retention, and dropout rates, and the needs of recent high school graduates and placebound adults. The board should consider the needs of residents of all geographic regions, but its initial priorities should be applied to heavily populated areas underserved by public institutions;~~

~~(b) Recommendations on enrollment and other policies and actions to meet those needs;~~

~~(c) Guidelines for continuing education, adult education, public service, and other higher education programs;~~

~~(d) Mechanisms through which the state's higher education system can meet the needs of employers hiring for industrial projects of statewide significance.~~

~~The initial plan shall be submitted to the governor and the legislature by December 1, 1987. Comments on the plan from the board's advisory committees and the institutions shall be submitted with the plan.~~

~~The plan shall be updated every four years, and presented to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan, and the updates. The plan shall then become state higher education policy unless legislation is enacted to alter the policies set forth in the plan;~~

~~(4)) Review, evaluate, and make recommendations on operating and capital budget requests from four-year institutions and the community and technical college system, based on ((the elements outlined in subsections (1), (2), and (3) of this section, and on)) how the budget requests align with and implement the statewide strategic master plan for higher education under section 2 of this act.~~

~~(a) By December of each odd-numbered year, the board shall distribute guidelines which outline the board's fiscal priorities((These guidelines shall be distributed)) to the institutions and the state board for community and technical colleges ((board by December of each odd-numbered year)). The institutions and the state board for community and technical colleges ((board)) shall submit an outline of their proposed budgets, identifying major components, to the board no later than August 1st of each even-numbered year. The board shall submit recommendations on the proposed budgets and on the board's budget priorities to the office of financial management before November 1st of each even-numbered year, and to the legislature by January 1st of each odd-numbered year;~~

~~((5)) (b) Institutions and the state board for community and technical colleges shall submit any supplemental budget requests and revisions to the board at the same time they are submitted to the office of financial management. The board shall submit recommendations on the proposed supplemental budget requests to the office of financial management by November 1st and to the legislature by January 1st;~~

~~((6)) (2) Recommend legislation affecting higher education;~~

~~((7)) Recommend tuition and fees policies and levels based on comparisons with peer institutions;~~

~~(8) Establish priorities and develop recommendations on financial aid based on comparisons with peer institutions;~~

~~(9)) (3) Prepare recommendations on merging or closing institutions; and~~

~~((10)) (4) Develop criteria for identifying the need for new baccalaureate institutions.~~

Sec. 4. RCW 28B.80.340 and 1985 c 370 s 5 are each amended to read as follows:

(1) The board shall perform the following program responsibilities, in consultation with the institutions and with other interested agencies and individuals:

~~((1)) (a) Approve the creation of any new degree programs at the four-year institutions and prepare fiscal notes on any such programs;~~

~~((2)) (b) Review, evaluate, and make recommendations for the modification, consolidation, initiation, or elimination of on-campus programs, at the four-year institutions;~~

~~((3)) (c) Review and evaluate and approve, modify, consolidate, initiate, or eliminate off-campus programs at the four-year institutions;~~

~~((4)) (d) Approve, and adopt guidelines for, higher education centers and consortia;~~

~~((5)) (e) Approve purchase or lease of major off-campus facilities for the four-year institutions and the community colleges;~~

~~((6)) (f) Establish campus service areas and define on-campus and off-campus activities and major facilities; and~~

~~((7)) (g) Approve contracts for off-campus educational programs initiated by the state's four-year institutions individually, in concert with other public institutions, or with independent institutions.~~

(2) In performing its responsibilities under this section, the board shall consider, and require institutions to demonstrate, how the proposals align with or implement the statewide strategic master plan for higher education under section 2 of this act. The board shall also develop clear guidelines and objective decision-making criteria regarding approval of proposals under this section.

Sec. 5. RCW 28B.80.610 and 1993 c 363 s 2 are each amended to read as follows:

(1) At the local level, the higher education institutional responsibilities include but are not limited to:

(a) Development and provision of strategic plans ~~((under the guidelines established by the higher education coordinating board))~~ that implement the vision, goals, priorities, and strategies within the statewide strategic master plan for higher education under section 2 of this act based on the institution's role and mission. Institutional strategic plans shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities. In developing their strategic plans, the research universities shall consider the feasibility of significantly increasing the number of evening graduate classes;

(b) For the four-year institutions of higher education, timely provision of information required by the higher education coordinating board to report to the governor, the legislature, and the citizens;

(c) Provision of local student financial aid delivery systems to achieve both statewide goals and institutional objectives in concert with statewide policy; and

(d) Operating as efficiently as feasible within institutional missions and goals.

(2) At the state level, the higher education coordinating board shall be responsible for:

(a) ~~((Delineation and coordination of))~~ Ensuring that strategic plans to be prepared by the institutions are aligned with and implement the statewide strategic master plan for higher education under section 2 of this act and periodically monitoring institutions' progress toward achieving the goals and priorities within their plans;

(b) Preparation of reports to the governor, the legislature, and the citizens on program accomplishments and use of resources by the institutions;

(c) Administration and policy implementation for statewide student financial aid programs; and

(d) Assistance to institutions in improving operational efficiency through measures that include periodic review of program efficiencies.

(3) At the state level, on behalf of community colleges and technical colleges, the state board for community and technical colleges shall coordinate and report on the system's strategic plans, including reporting on the system's progress toward achieving the statewide goals and priorities within its plan, and shall provide any information required of its colleges by the higher education coordinating board.

Sec. 6. RCW 28B.50.090 and 1991 c 238 s 33 are each amended to read as follows:

The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each college district shall offer thoroughly comprehensive educational, training and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and work force literacy programs and services. However, technical colleges, and college districts containing only technical colleges, shall

maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding May 17, 1991;

(b) That each college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of the student's residence or because of the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, the student would not be competent to profit from the curriculum offerings of the college, or would, by his or her presence or conduct, create a disruptive atmosphere within the college not consistent with the purposes of the institution. This subsection (3)(b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support plans for providing adequate college facilities in all areas of the state. The master plan shall include implementation of the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education under section 2 of this act based on the community and technical college system's role and mission. The master plan shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education,

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW,

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges,

(d) Standard admission policies,

(e) Eligibility of courses to receive state fund support;

(8) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various college districts;

(9) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(10) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(11) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(12) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(13) In order that the treasurer for the state board for community and technical colleges appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board providing for an initial advance on July 1, 1982, of the current biennium and on July 1 of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(14) Notwithstanding the provisions of subsection (12) of this section, may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs and may sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(15) The college board shall have the power of eminent domain;

(16) Provide general supervision over the state's technical colleges. The president of each technical college shall report directly to the director of the state board for community and technical colleges, or the director's designee, until local control is assumed by a new or existing board of trustees as appropriate, except that a college president shall have authority over program decisions of his or her college until the establishment of a board of trustees for that college. The directors of the vocational-technical institutes on March 1, 1991, shall be designated as the presidents of the new technical colleges.

NEW SECTION. Sec. 7. (1) A legislative work group is established to provide guidance for the statewide strategic master plan for higher education and review options pertaining to the higher education coordinating board. The legislative work group shall consist of the members of the house of representatives and senate higher education and fiscal committees. Cochairs shall be the chair of the senate higher education committee and the chair of the house of representatives higher education committee.

(2) The legislative work group shall:

(a) Define legislative expectations and provide policy direction for the statewide strategic master plan for higher education under section 2 of this act;

(b) Make recommendations for ensuring the coordination of higher education capital and operating budgets with the goals and priorities in the statewide strategic master plan for higher education; and

(c) Examine opportunities to update the roles and responsibilities of the higher education coordinating board, including alternatives for administration of financial aid and other programs; review of institution budget requests; approval of off-campus programs, centers, and consortia; and collection and analysis of data.

(3) The legislative work group shall use legislative facilities and staff from senate committee services and the office of program research.

(4) The legislative work group shall report its findings and recommendations to the legislature by January 2, 2004.

(5) This section expires July 1, 2004.

Passed by the House April 21, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 131

[Substitute House Bill 1909]

HIGHER EDUCATION—COMPETENCY-BASED TRANSFERS

AN ACT Relating to creating a pilot project for competency-based transfer in higher education; creating new sections; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that the focus of transfer between institutions of higher education has been on students' accumulation of credits, where courses necessary for entry to each successive level of higher education have been individually identified and vary by institution and academic discipline. It is the legislature's intent to begin a process that will change the focus of transfer to defining and recognizing student competencies.

NEW SECTION. Sec. 2. (1) The higher education coordinating board, in consultation with the state board for community and technical colleges and the council of presidents, shall recruit and select institutions of higher education to participate in a pilot project to define transfer standards in selected academic disciplines on the basis of student competencies. Participants shall include one public four-year institution of higher education, two or more community or technical colleges that regularly transfer a substantial number of students to that

four-year institution, and one or more private career colleges that prepare students in the academic disciplines selected under the pilot project. Such colleges shall be accredited and licensed under chapter 28C.10 RCW.

(2) The pilot project participants shall identify several academic disciplines to form the basis of the project and develop a work plan, timelines, and expected products for the project, which shall be presented by the higher education coordinating board in a preliminary report to the higher education committees of the legislature by December 1, 2004.

(3) Under the pilot project, participants shall develop standards, definitions, and procedures for quality assurance for a transfer system based on student competencies. It is the legislature's intent that under such a system, four-year institutions of higher education, in collaboration with two-year institutions of higher education, define the knowledge, skills, and abilities students should possess in order to enter an upper division program in a particular academic discipline. The two and four-year institutions providing lower division preparation for such an upper division program are responsible for certifying that a student meets the expected standards, but have flexibility to determine how to assess whether the student has obtained the necessary knowledge, skills, and abilities. Such assessments need not be based on completion of particular courses or accumulation of credits.

(4) The pilot project participants may request assistance in their work from the higher education coordinating board, the western interstate commission on higher education, the state board for community and technical colleges, or the council of presidents. The pilot project participants and the higher education coordinating board shall structure the work of the project in such a way that development costs for the project are absorbed within existing institution and agency budgets.

(5) In collaboration with the higher education coordinating board, the pilot project participants shall report to the higher education committees of the legislature by December 1, 2005, on the progress and status of the pilot project. The report shall identify any barriers encountered by the project and make recommendations for next steps in developing a competency-based transfer system for higher education.

(6) This section expires June 30, 2006.

Passed by the House April 21, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 132

[Substitute House Bill 2111]

HIGHER EDUCATION PERFORMANCE CONTRACTS

AN ACT Relating to performance contracts between the state and institutions of higher education; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that ten years have passed since the state attempted to redefine the relationship with its institutions

of higher education based on trust, evidence, and a new alignment of responsibilities, as articulated in chapter 363, Laws of 1993.

(2) However, the legislature also finds that the intent to combine institutional flexibility and authority to make decisions at the local level with accountability for achieving statewide goals and objectives has never been fully achieved, in part because there has not been an operating mechanism through which to implement this relationship.

(3) Therefore, the legislature intends to explore opportunities to create performance contracts between the state and public institutions of higher education. It is the intent of the legislature that such a contract would constitute a negotiated agreement between the state and an institution, where the state's primary interest would lie not in the management and operations of an institution, but in the institution's contribution to achieving agreed-upon statewide goals and objectives for higher education.

NEW SECTION. Sec. 2. (1) A work group on higher education performance contracts is established. The work group shall consist of members as follows:

(a) The members of the house and senate higher education and fiscal committees;

(b) One representative of the higher education coordinating board, appointed by the board;

(c) One representative of the state board for community and technical colleges, appointed by the state board;

(d) Two representatives of public four-year institutions of higher education, appointed by the council of presidents;

(e) Two representatives of the community and technical colleges, appointed by the Washington association of community and technical colleges; and

(f) One representative of the governor's office and one representative of the office of financial management, each appointed by the governor.

(2) The work group may invite input from other interested parties, including but not limited to faculty and student representatives and representatives of the business community. Within available funds, the work group may obtain additional expertise or engage consultants if necessary to carry out its work.

(3) The work group shall:

(a) Examine the experience of other states in developing and implementing performance contracts with institutions of higher education;

(b) Consider the feasibility of implementing performance contracts in Washington;

(c) Identify whether amendments to current laws may be necessary to implement performance contracts; and

(d) Develop guidelines and possible models for performance contracts, including:

(i) The types of indicators and benchmarks that could be included in a contract to measure an institution's progress in meeting the contract's objectives; and

(ii) The types of flexibility, exemptions, or commitments that could be included in a contract to reflect the state's obligation to an institution.

(4) The work group shall use legislative facilities and staff from senate committee services and the office of program research. Each nonlegislative

member of the work group shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. Travel expenses for the nonlegislative members shall be paid by their respective institutions or agencies.

(5) The work group shall report its findings and recommendations to the higher education and fiscal committees of the legislature by December 15, 2003.

NEW SECTION. Sec. 3. This act expires June 30, 2004.

Passed by the House April 22, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 133

[Second Substitute House Bill 2012]

SPECIAL SERVICES PILOT PROGRAM

AN ACT Relating to a special services pilot program; adding a new section to chapter 28A.630 RCW; creating a new section; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. Research has shown that early, intensive assistance can significantly improve reading and language skills for children who are struggling academically. This early research-based assistance has been successful in reducing the number of children who require specialized programs. However, by being effective in reducing the number of students eligible for these programs, school district funding is reduced.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.630 RCW to read as follows:

(1) The special services pilot program is created. The purpose of the program is to encourage participating school districts to provide early intensive reading and language assistance to students who are struggling academically. The goal of such assistance is to effectively address reading and language difficulties resulting in a substantially greater proportion of students meeting the progressively increasing performance standards for both the aggregate and disaggregated subgroups under federal law.

(2) A maximum of two school districts may participate. Interested districts shall apply no later than May 15, 2003, to the superintendent of public instruction to participate in the pilot program established by this section. The superintendent shall make a decision no later than June 15, 2003, regarding which two school districts may participate in the program.

(3) The pilot program is intended to be four years, to begin in the 2003-04 school year and conclude in the 2006-07 school year, unless the program is extended by the legislature.

(4) School districts participating in the pilot program shall receive state special education funding in accordance with state special education funding formulas and a separate pilot program appropriation from sources other than special education funds. The separate appropriation shall be calculated as follows:

(a) The school district's estimated state special education funding for the current year based on the school district's average percentage of students age

three through twenty-one who were eligible for special education services in the 2001-02 and 2002-03 school years as reported to the office of the superintendent of public instruction;

(b) Less the school district's actual state special education funding based on the district's current percentage of students age three through twenty-one eligible for special education services as reported to the superintendent of public instruction.

(5) Participation in the pilot program shall not increase or decrease a district's ability to access the safety net for high cost students by virtue of the district's participation in this pilot program. Districts participating in this pilot program shall have access to the special education safety net using a modified application approach for the office of the superintendent of public instruction Worksheet A - demonstration of financial need. The superintendent shall create a modified application to include all special education revenues received by the district, all pilot program funding, and include expenditures for students with individual education plans and expenditures for students generating pilot program revenue. Districts participating in this pilot project that seek safety net funding shall convincingly demonstrate to the committee that any change in demonstrated need on the Worksheet A is not attributable to their participation in this pilot project.

(6) School districts participating in the program must agree to:

(a) Implement a tiered set of research-based instructional interventions addressing individual student needs that address reading and language deficits;

(b) Use multiple diagnostic instruments to identify the literacy needs of each student;

(c) Assure parents are informed of diagnosed student needs, and have input into designed interventions;

(d) Actively engage parents as partners in the learning process;

(e) Comply with state special education requirements; and

(f) Participate in an evaluation of the program as determined by the superintendent of public instruction. This may include contributing funds and staff expertise for the design and implementation of the evaluation. Districts shall annually review and report progress, including objective measures or indicators that show the progress towards achieving the purpose and goal of the program, to the office of the superintendent of public instruction.

(7) By December 15, 2006, the superintendent of public instruction shall submit a report to the governor and legislature that summarizes the effectiveness of the pilot program. The report shall also include a recommendation as to whether or not the pilot program should be continued, expanded, or otherwise modified.

(8) This section expires June 30, 2007.

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 by the House April 21, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 134

[Substitute House Bill 1624]

TELEPHONE ASSISTANCE

AN ACT Relating to the Washington telephone assistance program; amending RCW 80.36.005, 80.36.410, 80.36.420, 80.36.430, 80.36.440, 80.36.450, 80.36.460, 80.36.470, and 80.36.475; repealing 1998 c 159 s 1, 1993 c 249 s 3, 1990 c 170 s 8, and 1987 c 229 s 12 (uncodified); repealing 2002 c 104 s 4 (uncodified); providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 80.36.005 and 2002 c 104 s 1 are each amended to read as follows:

The definitions in this section apply throughout RCW 80.36.410 through 80.36.475, unless the context clearly requires otherwise.

(1) "Community agency" means local community agencies that administer community service voice mail programs.

(2) "Community service voice mail" means a computerized voice mail system that provides low-income recipients with: (a) An individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a private security code to retrieve messages.

(3) "Department" means the department of social and health services.

(4) "Service year" means the period between July 1st and June 30th.

(5) "Community action agency" means local community action agencies or local community service agencies designated by the department of community, trade, and economic development under chapter 43.63A RCW.

Sec. 2. RCW 80.36.410 and 2002 c 104 s 2 are each amended to read as follows:

(1) The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that: ~~((1))~~ (a) Recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service; and ~~((2))~~ (b) many low-income persons making the transition to independence from receiving supportive services through community agencies do not qualify for economic assistance from the department.

(2) Therefore, the legislature finds that: (a) It is in the public interest to take steps to mitigate the effects of these changes on low-income persons; and (b) advances in telecommunications technologies, such as community service voice mail provide new and economically efficient ways to secure many of the benefits of universal service to low-income persons who are not customers of local exchange telephone service.

Sec. 3. RCW 80.36.420 and 1990 c 170 s 2 are each amended to read as follows:

The Washington telephone assistance program shall be available to participants of ~~((department))~~ programs set forth in RCW 80.36.470. Assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent or more as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate service for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single telephone assistance rate for all local exchange companies operating in the state of Washington. The telephone assistance rate shall include any federal end user ~~((access))~~ charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the telephone assistance rate, consider all charges for local exchange service, including federal end user ~~((access))~~ charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The telephone assistance rate shall only be available to eligible customers subscribing to the lowest ~~((available))~~ priced local exchange flat rate service, where the lowest priced local exchange flat rate service, including any federal end user ~~((access))~~ charges and any other charges necessary to obtain local exchange service, is greater than the telephone assistance rate. ~~((Low-income senior citizens sixty years of age and older and other low-income persons identified by the department as medically needy shall, where single-party service is available, be provided with single-party service as the lowest available local exchange flat rate service.))~~

(d) The cost of providing the service shall be paid, to the maximum extent possible, by a waiver of all or part of ~~((the))~~ federal end user ~~((access))~~ charges and, to the extent necessary, from the telephone assistance fund created by RCW 80.36.430.

(4) A discount on a community service voice mailbox that provides recipients with (a) an individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a secure private security code to retrieve messages.

Sec. 4. RCW 80.36.430 and 1990 c 170 s 3 are each amended to read as follows:

(1) The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department.

(2) Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department shall enter into an agreement with the department of community, trade, and economic development for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge.

Sec. 5. RCW 80.36.440 and 1990 c 170 s 4 are each amended to read as follows:

(1) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.470.

(2) Rules necessary for the implementation of community service voice mail services shall be made by the commission and the department in consultation with the department of community, trade, and economic development.

Sec. 6. RCW 80.36.450 and 1993 c 249 s 2 are each amended to read as follows:

The Washington telephone assistance program shall ~~((be limited))~~ limit reimbursement to one residential switched access line per eligible household, or one discounted community service voice mailbox per eligible person.

Sec. 7. RCW 80.36.460 and 1990 c 170 s 5 are each amended to read as follows:

Local exchange companies shall ~~((file tariffs with the commission which))~~ waive deposits on local exchange service for eligible subscribers and ~~((which establish))~~ provide a fifty percent discount on the company's customary charge for commencing telecommunications service ((connection fees)) for eligible subscribers. Part or all of the remaining fifty percent of service connection fees may be paid by funds from federal government or other programs for this purpose. The commission or other appropriate agency shall make timely application for any available federal funds. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered from the telephone assistance fund. ~~((Eligible subscribers shall be allowed one waiver of a deposit and one discount on service connection fees per year.))~~

Sec. 8. RCW 80.36.470 and 2002 c 104 s 3 are each amended to read as follows:

(1) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department shall notify the participants of their eligibility.

(2) Participants in community service voice mail programs are eligible for participation in ~~((the telephone assistance program))~~ services available under RCW 80.36.420 (1), (2), and (3) after completing use of community service voice mail services. Eligibility shall be for a period including the remainder of

the current service year and the following service year. Community agencies shall notify the department of participants eligible under this subsection.

Sec. 9. RCW 80.36.475 and 1990 c 170 s 7 are each amended to read as follows:

The department shall report to the ~~((energy and utilities))~~ appropriate committees of the house of representatives and the senate by December 1 of each year on the status of the Washington telephone assistance program. The report shall include the number of participants by qualifying social service programs receiving benefits from the telephone assistance program and the type of benefits participants receive. The report shall also include a description of the geographical distribution of participants, the program's annual revenue and expenditures, and any recommendations for legislative action.

NEW SECTION. **Sec. 10.** 1998 c 159 s 1, 1993 c 249 s 3, 1990 c 170 s 8, & 1987 c 229 s 12 (uncodified) are each repealed.

NEW SECTION. **Sec. 11.** 2002 c 104 s 4 (uncodified) is repealed.

NEW SECTION. **Sec. 12.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the House April 21, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 135

[Engrossed Substitute House Bill 1787]

211 SYSTEM

AN ACT Relating to health and human services and information referral; adding a new chapter to Title 43 RCW; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** **FINDINGS.** The legislature finds that the implementation of a single easy to use telephone number, 211, for public access to information and referral for health and human services and information about access to services after a natural or nonnatural disaster will benefit the citizens of the state of Washington by providing easier access to available health and human services, by reducing inefficiencies in connecting people with the desired service providers, and by reducing duplication of efforts. The legislature further finds in a time of reduced resources for providing health and human services that establishing a cost-effective means to continue to provide information to the public about available services is important. The legislature further finds that an integrated statewide system of local information and referral service providers will build upon an already existing network of experienced service providers without the necessity of creating a new agency, department, or system to provide 211 services. The legislature further finds that no funds should be appropriated by the legislature to a 211 system under this act without receiving documentation that a 211 system will provide savings to the state.

NEW SECTION. Sec. 2. 211 SYSTEM. 211 is created as the official state dialing code for public access to information and referral for health and human services and information about access to services after a natural or nonnatural disaster.

NEW SECTION. Sec. 3. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of social and health services.
- (2) "WIN 211" means the Washington information network 211, a 501(c)(3) corporation incorporated in the state of Washington.
- (3) "Approved 211 service provider" means a public or nonprofit agency or organization designated by WIN 211 to provide 211 services.
- (4) "211 service area" means an area of the state of Washington identified by WIN 211 as an area in which an approved 211 service provider will provide 211 services.
- (5) "211" means the abbreviated dialing code assigned by the federal communications commission on July 21, 2000, for consumer access to community information and referral services.

NEW SECTION. Sec. 4. NEW INFORMATION SERVICES. Before a state agency or department that provides health and human services establishes a new public information telephone line or hotline, the state agency or department shall consult with WIN 211 about using the 211 system to provide public access to the information.

NEW SECTION. Sec. 5. 211 SERVICES. Only a service provider approved by WIN 211 may provide 211 telephone services. WIN 211 shall approve 211 service providers, after considering the following:

- (1) The ability of the proposed 211 service provider to meet the national 211 standards recommended by the alliance of information and referral systems and adopted by the national 211 collaborative on May 5, 2000;
- (2) The financial stability and health of the proposed 211 service provider;
- (3) The community support for the proposed 211 service provider;
- (4) The relationships with other information and referral services; and
- (5) Such other criteria as WIN 211 deems appropriate.

NEW SECTION. Sec. 6. 211 ACCOUNT. The 211 account is created in the state treasury. Moneys in the account may be spent only after appropriation. The 211 account shall include any funding for this purpose appropriated by the legislature, private contributions, and all other sources. Expenditures from the 211 account shall be used only for the implementation and support of the 211 system.

NEW SECTION. Sec. 7. USE OF MONEYS FOR PROJECTS AND ACTIVITIES IN SUPPORT OF 211—ELIGIBLE ACTIVITIES. (1) WIN 211 shall study, design, implement, and support a statewide 211 system.

(2) Activities eligible for assistance from the 211 account include, but are not limited to:

- (a) Creating a structure for a statewide 211 resources data base that will meet the alliance for information and referral systems standards for information and referral systems data bases and that will be integrated with local resources data bases maintained by approved 211 service providers;
- (b) Developing a statewide resources data base for the 211 system;

(c) Maintaining public information available from state agencies, departments, and programs that provide health and human services for access by 211 service providers;

(d) Providing grants to approved 211 service providers for the design, development, and implementation of 211 for its 211 service area;

(e) Providing grants to approved 211 service providers to enable 211 service providers to provide 211 service on an ongoing basis; and

(f) Providing grants to approved 211 service providers to enable the provision of 211 services on a twenty-four-hour per day seven-day a week basis.

NEW SECTION. Sec. 8. REPORTING. WIN 211 shall provide an annual report to the legislature and the department beginning July 1, 2004.

NEW SECTION. Sec. 9. CAPTIONS NOT LAW. Captions used in this chapter are not part of the law.

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

NEW SECTION. Sec. 11. EFFECTIVE DATE. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

NEW SECTION. Sec. 12. Sections 1 through 11 of this act constitute a new chapter in Title 43 RCW.

Passed by the House March 14, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 136

[Substitute House Bill 1813]

DISABLED PERSONS—EMPLOYMENT

AN ACT Relating to employment opportunities for people with disabilities; amending RCW 43.19.520, 43.19.525, 43.19.530, and 43.19.1911; adding new sections to chapter 43.19 RCW; adding new sections to chapter 50.40 RCW; and providing expiration dates.

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

Sec. 1. RCW 43.19.520 and 1974 ex.s. c 40 s 1 are each amended to read as follows:

It is the intent of the legislature to encourage state agencies and departments to purchase products and/or services manufactured or provided by (~~sheltered workshops and~~):

(1) Community rehabilitation programs of the department of social and health services which operate facilities serving ~~((the handicapped and))~~ disadvantaged persons and persons with disabilities and have achieved or consistently make progress towards the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their

opportunities for employment and career advancement, and increase the number employed and their wages; and

(2) Until December 31, 2007, businesses owned and operated by persons with disabilities that have achieved or consistently make progress towards the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages.

Sec. 2. RCW 43.19.525 and 1974 ex.s. c 40 s 2 are each amended to read as follows:

((As used in RCW 43.19.520 and 43.19.530 the term "sheltered workshops" shall have the meaning ascribed to it by RCW 82.04.385 and)) The definitions in this section apply throughout RCW 43.19.520 through 43.19.530 unless the context clearly requires otherwise.

(1) "Businesses owned and operated by persons with disabilities" means any for-profit business certified under chapter 39.19 RCW as being owned and controlled by persons who have been either:

(a) Determined by the department of social and health services to have a developmental disability, as defined in RCW 71A.10.020;

(b) Determined by an agency established under Title 1 of the federal vocational rehabilitation act to be or have been eligible for vocational rehabilitation services;

(c) Determined by the federal social security administration to be or have been eligible for either social security disability insurance or supplemental security income; or

(d) Determined by the United States department of veterans affairs to be or have been eligible for vocational rehabilitation services due to service-connected disabilities, under 38 U.S.C. Sec. 3100 et seq.

(2) "Community rehabilitation programs of the department of social and health services" ((shall)) means ((the group training homes and day training centers defined in RCW 72.33.800)) any entity that:

(a) Is registered as a nonprofit corporation with the secretary of state; and

(b) Is recognized by the department of social and health services, division of vocational rehabilitation as eligible to do business as a community rehabilitation program.

(3) "Vendor in good standing" means a business owned and operated by persons with disabilities or a community rehabilitation program, that has been determined under sections 4 and 7 of this act to meet the following criteria:

(a) Has not been in material breach of any quality or performance provision of any contract for the purchase of goods or services during the past thirty-six months; and

(b) Has achieved, or continues to work towards, the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages, as determined by the governor's committee on disability issues and employment.

Sec. 3. RCW 43.19.530 and 1977 ex.s. c 10 s 2 are each amended to read as follows:

The state agencies and departments are hereby authorized to purchase products and/or services manufactured or provided by ~~((sheltered workshops and))~~;

(1) Community rehabilitation programs of the department of social and health services; and

(2) Until December 31, 2007, businesses owned and operated by persons with disabilities.

Such purchases shall be at the fair market price of such products and services as determined by the division of purchasing of the department of general administration. To determine the fair market price the division shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section the division is hereby empowered to negotiate directly for the purchase of products or services with ((sheltered workshops or)) officials in charge of the community rehabilitation programs of the department of social and health services ~~((for the purchase of the products or services))~~ and, until December 31, 2007, businesses owned and operated by persons with disabilities.

NEW SECTION. Sec. 4. A new section is added to chapter 43.19 RCW to read as follows:

(1) The department of general administration shall identify in the department's vendor registry all vendors in good standing, as defined in RCW 43.19.525.

(2) The department of general administration shall annually, but no less often than once every fifteen months:

(a) Request that vendors in good standing update their information in the department's vendor registry including but not limited to the Washington state commodity codes for products and services that the vendors propose to offer to state agencies during at least the subsequent fifteen-month period;

(b) Disseminate the information obtained in response to the request made pursuant to (a) of this subsection to at least one purchasing official in each state agency; and

(c) Notify each vendor in good standing of all contracts for the purchase of goods and services by state agencies with respect to which the department of general administration anticipates either renewing or requesting bids or proposals within at least twelve months of the date of the notice.

(3) The department of general administration and the governor's committee on disability issues and employment shall jointly prepare and, on or before December 31, 2006, issue a report to the governor and the legislature. The report shall describe the activities authorized or required by this act, and their effect on enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages.

(4) This section expires December 31, 2007.

NEW SECTION. Sec. 5. A new section is added to chapter 43.19 RCW to read as follows:

(1) Nothing in this act requires any state agency to take any action that interferes with or impairs an existing contract between any state agency and any other party, including but not limited to any other state agency.

(2) Until December 31, 2007, except as provided under RCW 43.19.1906(2) for purchases up to three thousand dollars, RCW 43.19.534, and subsection (1) of this section, a state agency shall not purchase any product or service identified in the notice most recently disseminated by the department of general administration, as provided under section 4(2)(b) of this act, from other than a vendor in good standing until the state agency has included in the solicitation process at least one vendor in good standing supplying the goods or service needed by the agency, unless no vendor in good standing supplying the goods or service needed by the agency is available.

Sec. 6. RCW 43.19.1911 and 1996 c 69 s 2 are each amended to read as follows:

(1) Preservation of the integrity of the competitive bid system dictates that after competitive bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid pursuant to subsections (7) and (9) of this section, unless there is a compelling reason to reject all bids and cancel the solicitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to provide reasonable notice to all prospective bidders of any resulting modification or cancellation. If, in the opinion of the purchasing agency, division, or department head, it is not possible to provide reasonable notice, the published date for receipt of bids may be postponed and all known bidders notified. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices. In addition, every effort shall be made to include realistic, achievable requirements in a solicitation.

(3) After the opening of bids, a solicitation may not be canceled and resolicited solely because of an increase in requirements for the items being acquired. Award may be made on the initial solicitation and an increase in requirements may be treated as a new acquisition.

(4) A solicitation may be canceled and all bids rejected before award but after bid opening only when, consistent with subsection (1) of this section, the purchasing agency, division, or department head determines in writing that:

(a) Unavailable, inadequate, ambiguous specifications, terms, conditions, or requirements were cited in the solicitation;

(b) Specifications, terms, conditions, or requirements have been revised;

(c) The supplies or services being contracted for are no longer required;

(d) The solicitation did not provide for consideration of all factors of cost to the agency;

(e) Bids received indicate that the needs of the agency can be satisfied by a less expensive article differing from that for which the bids were invited;

(f) All otherwise acceptable bids received are at unreasonable prices or only one bid is received and the agency cannot determine the reasonableness of the bid price;

(g) No responsive bid has been received from a responsible bidder; or

(h) The bid process was not fair or equitable.

(5) The agency, division, or department head may not delegate his or her authority under this section.

(6) After the opening of bids, an agency may not reject all bids and enter into direct negotiations to complete the planned acquisition. However, the agency can enter into negotiations exclusively with the lowest responsible bidder in order to determine if the lowest responsible bid may be improved. Until December 31, 2007, for purchases requiring a formal bid process the agency shall also enter into negotiations with and may consider for award the lowest responsible bidder that is a vendor in good standing, as defined in RCW 43.19.525. An agency shall not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

(7) In determining the lowest responsible bidder, the agency shall consider any preferences provided by law to Washington products and vendors and to RCW 43.19.704, and further, may take into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery.

(8) Each bid with the name of the bidder shall be entered of record and each record, with the successful bid indicated, shall, after letting of the contract, be open to public inspection.

(9) In determining "lowest responsible bidder", in addition to price, the following elements shall be given consideration:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Such other information as may be secured having a bearing on the decision to award the contract: PROVIDED, That in considering bids for purchase, manufacture, or lease, and in determining the "lowest responsible bidder," whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications. "Life cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life. The "estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner. Nothing in this section shall prohibit any state agency, department, board, commission, committee, or other state-level entity from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

NEW SECTION. Sec. 7. A new section is added to chapter 50.40 RCW to read as follows:

(1) No less frequently than once each year, the governor's committee on disability issues and employment shall determine whether entities seeking to qualify as vendors in good standing, pursuant to this section and section 4 of this

act, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages.

(2) In making the determination provided for in subsection (1) of this section, the governor's committee on disability issues and employment shall appoint and, except in the case of malfeasance or misfeasance, shall rely upon the conclusions of an advisory subcommittee consisting of: (a) Three members chosen from among those current or former clients of a community rehabilitation program who have nominated themselves, at least one of whom must be a person with a developmental disability; (b) one member chosen from among those guardians, parents, or other relatives of a current client or employee of a community rehabilitation program who have nominated themselves; (c) one member chosen from among those who have been nominated by a community rehabilitation program; (d) one member chosen from among those owners of a business owned and operated by persons with disabilities who have nominated themselves; (e) one member who is designated by the developmental disabilities council; (f) one member who is a member of and selected by the governor's committee on disability issues and employment; (g) one member who is designated by the secretary of the department of social and health services; and (h) one member who is designated by the director of the department of services for the blind.

(3) The advisory subcommittee appointed by the governor's committee on disability issues and employment shall conclude that entities seeking to qualify, pursuant to this section and section 4 of this act, as vendors in good standing, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages if, and only if, the entity provides reasonably conclusive evidence that, during the twelve-month period immediately preceding the entity's application, at least one-half of the following measurement categories applicable to the entity have been either achieved, pursuant to rules established under subsection (4) of this section, or have been improved as compared to the entity's condition with respect to that measurement category one year ago:

(a) The number of people with disabilities in the entity's total work force who are working in integrated settings;

(b) The percentage of the people with disabilities in the entity's total work force who are working in integrated settings;

(c) The number of people with disabilities in the entity's total work force who are working in individual supported employment settings;

(d) The percentage of the people with disabilities in the entity's total work force who are working in individual supported employment settings;

(e) The number of people with disabilities in the entity's total work force who, during the last twelve months, have transitioned to less restrictive employment settings either within the entity or with other community employers;

(f) The number of people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(g) The percentage of the people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(h) The number of people with disabilities serving in supervisory capacities within the entity;

(i) The percentage of supervisory positions within the entity that are occupied by people with disabilities;

(j) The number of people with disabilities serving in an ownership capacity or on the governing board of the entity;

(k) The ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities, as compared to the amount paid by the entity in wages, salaries, and related employment benefits paid by the entity to persons without disabilities during the previous year; and

(l) The percentage of people with disabilities in the entity's total work force for whom the entity has developed a reasonable, achievable, and written career plan.

(4) The commissioner shall consult with the advisory subcommittee established in subsection (2) of this section to develop and adopt rules establishing the measurement at which it is deemed that the measurement categories identified in subsection (3)(b), (d), (e), (g), (h), (j), (k), and (l) of this section have been achieved.

(5) This section expires December 31, 2007.

NEW SECTION. **Sec. 8.** A new section is added to chapter 50.40 RCW to read as follows:

(1) The commissioner is authorized to adopt rules to implement section 7 of this act, including but not limited to authority to establish (a) a nonrefundable application fee of not more than five hundred dollars to be paid by each entity seeking to establish or renew qualification as a vendor in good standing, pursuant to sections 4 and 7 of this act; (b) a fee of not more than two percent of the face amount of any contract awarded under this act; or (c) both fees identified in (a) and (b) of this subsection.

(2) The fee or fees established pursuant to subsection (1) of this section must set a level of revenue sufficient to recover costs incurred by the department of general administration in fulfilling the duties identified in section 4 of this act and the governor's committee on disability issues and employment in fulfilling the duties identified in section 7 of this act.

(3) The vendors in good standing account is created in the custody of the state treasurer. All receipts from the fee or fees established pursuant to subsection (1) of this section must be deposited into the account. Expenditures from the account may be used only for the purpose described in subsection (2) of this section. Expenditures from the account may be authorized only upon the approval of both the director of the department of general administration and the commissioner, or their respective designees. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) This section expires December 31, 2007, and any unencumbered funds remaining in the vendors in good standing account on that date shall revert to the general fund.

Passed by the House March 14, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 137

[Substitute House Bill 2007]

COMMERCIAL ELECTRONIC TEXT MESSAGES

AN ACT Relating to commercial text messages; amending RCW 19.190.010 and 19.190.040; adding new sections to chapter 19.190 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 recognizes that the number of unsolicited commercial text messages sent to cellular telephones and pagers is increasing. This practice is raising serious concerns on the part of cellular telephone and pager subscribers. These unsolicited messages often result in costs to the cellular telephone and pager subscribers in that they pay for use when a message is received through their devices. The limited memory of these devices can be exhausted by unwanted text messages resulting in the inability to receive necessary and expected messages.

The legislature intends to limit the practice of sending unsolicited commercial text messages to cellular telephone or pager numbers in Washington.

Sec. 2. RCW 19.190.010 and 1999 c 289 s 1 are each amended to read as follows:

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

(1) "Assist the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message or a commercial electronic text message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message or the commercial electronic text message is engaged, or intends to engage, in any practice that violates the consumer protection act.

(2) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease. It does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has agreed to such an arrangement.

(3) "Commercial electronic text message" means an electronic text message sent to promote real property, goods, or services for sale or lease.

(4) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

~~((4))~~ (5) "Electronic text message" means a text message sent to a cellular telephone or pager equipped with short message service or any similar capability, whether the message is initiated as a short message service message or as an electronic mail message.

(6) "Initiate the transmission" refers to the action by the original sender of an electronic mail message or an electronic text message, not to the action by any intervening interactive computer service or wireless network that may

handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates the consumer protection act.

((5)) (7) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

((6)) (8) "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

((7)) (9) "Person" means a person, corporation, partnership, or association.

NEW SECTION. Sec. 3. A new section is added to chapter 19.190 RCW to read as follows:

(1) No person conducting business in the state may initiate or assist in the transmission of an electronic commercial text message to a telephone number assigned to a Washington resident for cellular telephone or pager service that is equipped with short message capability or any similar capability allowing the transmission of text messages.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and 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. 4. A new section is added to chapter 19.190 RCW to read as follows:

(1) It is not a violation of section 3 of this act if:

(a) The commercial electronic text message is transmitted at the direction of a person offering cellular telephone or pager service to the person's existing subscriber at no cost to the subscriber unless the subscriber has indicated that he or she is not willing to receive further commercial text messages from the person; or

(b) The unsolicited commercial electronic text message is transmitted by a person to a subscriber and the subscriber has clearly and affirmatively consented in advance to receive these text messages.

(2) No person offering cellular or pager service may be held liable for serving merely as an intermediary between the sender and the recipient of a commercial electronic text message sent in violation of this chapter unless the person is assisting in the transmission of the commercial electronic text message.

Sec. 5. RCW 19.190.040 and 1998 c 149 s 5 are each amended to read as follows:

(1) Damages to the recipient of a commercial electronic mail message or a commercial electronic text message sent in violation of this chapter are five hundred dollars, or actual damages, whichever is greater.

(2) Damages to an interactive computer service resulting from a violation of this chapter are one thousand dollars, or actual damages, whichever is greater.

Passed by the House April 21, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 138

[Substitute House Bill 1854]

JOINT OPERATING AGENCIES—ENERGY PURCHASING

AN ACT Relating to joint operating agencies; adding a new section to chapter 43.52 RCW; adding a new section to chapter 54.16 RCW; adding a new section to chapter 35.92 RCW; adding a new section to chapter 35.22 RCW; adding a new section to chapter 35.23 RCW; adding a new section to chapter 35.27 RCW; and adding a new section to chapter 35A.80 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.52 RCW to read as follows:

A city or district may contract to purchase from an operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city or district must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the operating agency or a city or district under the contract or other instrument.

NEW SECTION. Sec. 2. A new section is added to chapter 54.16 RCW to read as follows:

A district may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the district must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon

the performance or nonperformance of the joint operating agency or a city, town, or district under the contract or other instrument.

NEW SECTION. Sec. 3. A new section is added to chapter 35.92 RCW to read as follows:

A city or town may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city or town must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument.

NEW SECTION. Sec. 4. A new section is added to chapter 35.22 RCW to read as follows:

A city of the first class may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument.

NEW SECTION. Sec. 5. A new section is added to chapter 35.23 RCW to read as follows:

A city of the second class may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint

operating agency or a city, town, or public utility district under the contract or other instrument.

NEW SECTION, Sec. 6. A new section is added to chapter 35.27 RCW to read as follows:

A town may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the town must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument.

NEW SECTION, Sec. 7. A new section is added to chapter 35A.80 RCW to read as follows:

A code city may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the code city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument.

Passed by the House April 21, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 139

[House Bill 1882]

LOCAL IMPROVEMENT DISTRICTS

AN ACT Relating to local improvement districts; amending RCW 35.45.050 and 36.88.160; adding a new section to chapter 35.45 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 35.45 RCW to read as follows:

Any city or town, when authorized by ordinance, may transfer permanently or temporarily, money from its general fund, or from any other municipal fund as

its council shall specify in that ordinance, to its local improvement guaranty fund or any of its local improvement funds to be used for the purposes of these local improvement funds, including the payment of bonds, interest coupons, warrants, or other short-term obligations. The powers granted by this section are to be exercised at the discretion of a council when found to be in the public interest, but money transferred by means of these powers shall not be pledged to the payment of any local improvement district obligations.

Sec. 2. RCW 35.45.050 and 1983 c 167 s 43 are each amended to read as follows:

Except when bonds have been issued with a fixed maturity schedule or with a fixed maximum annual retirement schedule as authorized in RCW 35.45.020, the city or town treasurer shall call in and pay the principal of one or more bonds of any issue (1) in their numerical order; or (2) where bonds are issued with an estimated redemption schedule, in either numerical order or chronological order by maturity and within each maturity by date of estimated redemption as determined in the bond authorizing ordinance, whenever there is sufficient money in any local improvement fund, against which the bonds have been issued, over and above that which is sufficient for the payment of interest on all unpaid bonds of that issue. The call shall be made for publication in the city or town official newspaper in its first publication following the date of delinquency of any installment of the assessment or as soon thereafter as practicable. The call shall state that bonds No. . . . (giving the serial number or numbers of the bonds called) will be paid on the day the next interest payments are due and that interest on those bonds will cease upon that date.

Sec. 3. RCW 36.88.160 and 1963 c 4 s 36.88.160 are each amended to read as follows:

All moneys collected by the treasurer upon any assessments under this chapter shall be kept as a separate fund to be known as "., county road improvement district No. . . . fund." Such funds shall be used for no other purpose than the payment of costs and expense of construction and improvement in such district and the payment of interest or principal of warrants and bonds drawn or issued upon or against said fund for said purposes. Whenever after payment of the costs and expenses of the improvement there shall be available in the local improvement district fund a sum, over and above the amount necessary to meet the interest payments next accruing on outstanding bonds, sufficient to retire one or more outstanding bonds the treasurer shall forthwith call such bond or bonds for redemption as determined in the bond authorizing ordinance.

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 by the House March 13, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 140

[House Bill 1753]

COMMUNITY-BASED AND IN-HOME CARE—NURSING

AN ACT Relating to nursing practices in community-based and in-home care; amending RCW 18.79.040, 18.79.260, 18.88A.140, 18.88A.200, 18.88A.210, 18.88A.230, 70.127.010, 70.127.040, 70.127.120, 70.127.170, 69.41.010, and 69.41.085; and declaring an emergency.

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

Sec. 1. RCW 18.79.040 and 1995 1st sp.s. c 18 s 50 are each amended to read as follows:

(1) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and skill based on the principles of the biological, physiological, behavioral, and sociological sciences in either:

(a) The observation, assessment, diagnosis, care or counsel, and health teaching of ~~((the ill, injured, or infirm))~~ individuals with illnesses, injuries, or disabilities, or in the maintenance of health or prevention of illness of others;

(b) The performance of such additional acts requiring education and training and that are recognized by the medical and nursing professions as proper and recognized by the commission to be performed by registered nurses licensed under this chapter and that are authorized by the commission through its rules;

(c) The administration, supervision, delegation, and evaluation of nursing practice. However, nothing in this subsection affects the authority of a hospital, hospital district, in-home service agency, community-based care setting, medical clinic, or office, concerning its administration and supervision;

(d) The teaching of nursing;

(e) The executing of medical regimen as prescribed by a licensed physician and surgeon, dentist, osteopathic physician and surgeon, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner.

(2) 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.

(3) This section does not prohibit (a) the nursing care of the sick, without compensation, by an unlicensed person who does not hold himself or herself out to be a registered nurse, (b) the practice of licensed practical nursing by a licensed practical nurse, or (c) the practice of a nursing assistant, providing delegated nursing tasks under chapter 18.88A RCW.

Sec. 2. RCW 18.79.260 and 2000 c 95 s 3 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))~~ to individuals with illnesses, injuries, or disabilities.

(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.

(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, working for a home health or hospice agency regulated under chapter 70.127 RCW, may delegate the application, instillation, or insertion of medications to a registered or certified nursing assistant under a plan of care.

~~(c) Except as authorized in (b) or (e) of this subsection, a registered nurse may not delegate the administration of medications. Except as authorized in (e) of this subsection, a registered nurse may not delegate acts requiring substantial skill, ((the administration of medications, or)) and may not delegate 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.

~~((e)) (d)~~ 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)) (e)~~ For delegation in community-based care settings or in-home 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.

(i) "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)) (ii)~~ "In-home care settings" include an individual's place of temporary or permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings as defined in (e)(i) of this subsection.

(iii) Delegation of nursing care tasks in community-based care settings and in-home 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.

~~((#))~~ (iv) 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.

~~((##))~~ (v) 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.

~~((#v))~~ (vi) 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.)~~

(vii) 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))~~ (f) 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.

Sec. 3. RCW 18.88A.140 and 2000 c 171 s 25 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 pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor;

(4) A nursing assistant, while employed as a personal aide as defined in RCW 74.39.007, from accepting direction from an individual who is self-directing their care.

Sec. 4. RCW 18.88A.200 and 1995 1st sp.s. c 18 s 45 are each amended to read as follows:

The legislature recognizes that nurses have been successfully delegating nursing care tasks to family members and auxiliary staff for many years. The opportunity for a nurse to delegate to nursing assistants qualifying under RCW

18.88A.210 may enhance the viability and quality of health care services in ~~((community health))~~ community-based care settings ~~((for long-term care services))~~ and in-home care settings to allow ~~((citizens))~~ individuals to live as independently as possible with maximum safeguards.

Sec. 5. RCW 18.88A.210 and 2000 c 95 s 1 are each amended to read as follows:

(1) A nursing assistant meeting the requirements of this section who provides care to individuals in community-based care settings or in-home 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, (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. Exceptions to these training requirements must adhere to RCW 18.79.260(3)~~((d)(iii))~~ (e)(v).

Sec. 6. RCW 18.88A.230 and 2000 c 95 s 2 are each amended to read as follows:

(1) The nursing assistant shall be accountable for their own individual actions in the delegation process. 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) Nursing assistants shall not be subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing task based on patient safety issues. No community-based care setting as defined in RCW 18.79.260(3)~~((d))~~ (e), or in-home services agency as defined in RCW 70.127.010, may discriminate or retaliate in any manner against a person because the person made a complaint or cooperated in the investigation of a complaint.

Sec. 7. RCW 70.127.010 and 2000 c 175 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.

(3) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by 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 person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260(3)(e) is not considered a home health agency for the purposes of this chapter.

(6) "Home care services" means nonmedical services and assistance provided to ill, disabled, (~~infirm,~~) 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 or delegated tasks of nursing under RCW 18.79.260(3)(e).

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health services" means services provided to ill, disabled, (~~infirm,~~) or vulnerable individuals. These services 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.

(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.

(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 person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(12) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280.

(13) "Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and family in a place of temporary or permanent residence, and may include the provision of home health and 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. 8. RCW 70.127.040 and 2000 c 175 s 4 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) A person who provides only meal services in an individual's permanent or temporary residence;

(3) 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 or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;

(5) A person who provides services through a contract with a licensed agency;

(6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(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))~~ 71A.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;

(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, ~~((infirm;))~~ or vulnerable individuals through a contract with the department of social and health services;

(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;

(11) In-home assessments of an ill, disabled, or vulnerable ~~((; or infirm))~~ individual that does not result in regular ongoing care at home;

(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;

(13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(14) A person providing case management 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;

(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. 9. RCW 70.127.120 and 2000 c 175 s 10 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 individuals by licensees;

(2) Establishment and implementation of a procedure for the receipt, investigation, and disposition of complaints regarding services provided;

(3) Establishment and implementation of a plan for ongoing care of individuals and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) Establishment and implementation of written policies regarding response to referrals and access to services;

(6) Establishment and implementation of written personnel policies, procedures and personnel records for paid staff that provide for prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality improvement activities. The department may not establish experience or other qualifications for agency personnel or contractors beyond that required by state law;

(7) Establishment and implementation of written policies and procedures for volunteers who have direct patient/client contact and that provide for background and health screening, orientation, and supervision;

(8) Establishment and implementation of written policies 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; and

(11) Establishment and implementation of policies related to agency implementation and oversight of nurse delegation as defined in RCW 18.79.260(3)(e).

Sec. 10. RCW 70.127.170 and 2000 c 175 s 14 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 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;

(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. 11. RCW 69.41.010 and 2000 c 8 s 2 are each amended to read as follows:

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

(1) "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) "Community-based care settings" include: 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.

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

~~((4))~~ (5) "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))~~ (6) "Dispenser" means a practitioner who dispenses.

~~((6))~~ (7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

~~((7))~~ (8) "Distributor" means a person who distributes.

~~((8))~~ (9) "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

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

~~((9))~~ (10) "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))~~ (11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "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))~~ (13) "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))~~ (14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting ~~((specified in RCW 69.41.085))~~ or in-home care setting 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))~~ A 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,))~~ and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

~~((13))~~ (15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~((14))~~ (16) "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.

~~((15))~~ (17) "Secretary" means the secretary of health or the secretary's designee.

Sec. 12. RCW 69.41.085 and 1998 c 70 s 1 are each amended to read as follows:

Individuals residing in community-based care settings, such as adult family homes, boarding homes, and residential care settings for the developmentally disabled, including an individual's home, ~~((might need medication assistance due to physical or mental limitations that prevent them from self-administering their legend drugs or controlled substances. The practitioner in consultation with the individual or his or her representative and the community-based setting, if involved, determines that medication assistance is appropriate for this~~

~~individual. Medication assistance can take different forms such as opening containers, handing the container or medication to the individual, preparing the medication with prior authorization, using enablers for facilitating the self-administration of medication, and other means of assisting in the administration of legend drugs or controlled substances commonly employed in community-based settings)) may receive medication assistance.~~ Nothing in this chapter affects the right of an individual to refuse medication or requirements relating to informed consent.

NEW SECTION. Sec. 13. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House April 21, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 141

[House Bill 1937]

POWER WHEELCHAIRS

AN ACT Relating to power wheelchairs; amending RCW 46.04.320, 46.04.330, 46.04.332, 46.04.400, 46.04.670, 46.20.500, and 47.04.010; and adding a new section to chapter 46.04 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.04 RCW to read as follows:

"Power wheelchair" means any self-propelled vehicle capable of traveling no more than fifteen miles per hour, usable indoors, designed as a mobility aid for individuals with mobility impairments, and operated by such an individual.

Sec. 2. RCW 46.04.320 and 2002 c 247 s 2 are each amended to read as follows:

"Motor vehicle" (~~shall~~) means every vehicle (~~which~~) that is self-propelled and every vehicle (~~which~~) that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle.

Sec. 3. RCW 46.04.330 and 2002 c 247 s 3 are each amended to read as follows:

"Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding a farm tractor, a power wheelchair, an electric personal assistive mobility device, and a moped.

The Washington state patrol may approve of and define as a "motorcycle" a motor vehicle that fails to meet these specific criteria, but that is essentially similar in performance and application to motor vehicles that do meet these specific criteria.

Sec. 4. RCW 46.04.332 and 2002 c 247 s 4 are each amended to read as follows:

"Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor that produces not to exceed five brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft). A motor-driven cycle does not include a moped, a power wheelchair, or an electric personal assistive mobility device.

Sec. 5. RCW 46.04.400 and 1990 c 241 s 1 are each amended to read as follows:

"Pedestrian" means any person who is afoot or who is using a wheelchair, a power wheelchair, or a means of conveyance propelled by human power other than a bicycle.

Sec. 6. RCW 46.04.670 and 2002 c 247 s 5 are each amended to read as follows:

"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, including bicycles. The term does not include power wheelchairs or devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds shall not be considered vehicles or motor vehicles for the purposes of chapter 46.70 RCW. Bicycles shall not be considered vehicles for the purposes of chapter 46.12, 46.16, or 46.70 RCW. Electric personal assistive mobility devices are not considered vehicles or motor vehicles for the purposes of chapter 46.12, 46.16, 46.29, 46.37, or 46.70 RCW.

Sec. 7. RCW 46.20.500 and 2002 c 247 s 6 are each amended to read as follows:

(1) No person may drive a motorcycle or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device or a power wheelchair.

Sec. 8. RCW 47.04.010 and 1975 c 62 s 50 are each amended to read as follows:

The following words and phrases, wherever used in this title, shall have the meaning as in this section ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part:

(1) "Alley." A highway within the ordinary meaning of alley not designated for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Arterial highway." Every highway, as herein defined, or portion thereof designated as such by proper authority;

(3) "Business district." The territory contiguous to and including a highway, as herein defined, when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway;

(4) "Center line." The line, marked or unmarked parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(5) "Center of intersection." The point of intersection of the center lines of the roadways of intersecting highways;

(6) "City street." Every highway as herein defined, or part thereof located within the limits of incorporated cities and towns, except alleys;

(7) "Combination of vehicles." Every combination of motor vehicle and motor vehicle, motor vehicle and trailer, or motor vehicle and semitrailer;

(8) "Commercial vehicle." Any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire;

(9) "County road." Every highway as herein defined, or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway, or branch thereof;

(10) "Crosswalk." The portion of the roadway between the intersection area and a prolongation or connection of the farthest sidewalk line or in the event there are no sidewalks then between the intersection area and a line ten feet therefrom, except as modified by a marked crosswalk;

(11) "Intersection area." (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict;

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection;

(c) The junction of an alley with a street or highway shall not constitute an intersection;

(12) "Intersection control area." The intersection area as herein defined, together with such modification of the adjacent roadway area as results from the arc or curb corners and together with any marked or unmarked crosswalks adjacent to the intersection;

(13) "Laned highway." A highway the roadway of which is divided into clearly marked lanes for vehicular traffic;

(14) "Local authorities." Every county, municipal, or other local public board or body having authority to adopt local police regulations under the Constitution and laws of this state;

(15) "Marked crosswalk." Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof;

(16) "Metal tire." Every tire, the bearing surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material;

(17) "Motor truck." Any motor vehicle, as herein defined, designed or used for the transportation of commodities, merchandise, produce, freight, or animals;

(18) "Motor vehicle." Every vehicle, as herein defined, which is in itself a self-propelled unit;

(19) "Multiple lane highway." Any highway the roadway of which is of sufficient width to reasonably accommodate two or more separate lanes of vehicular traffic in the same direction, each lane of which shall be not less than the maximum legal vehicle width, and whether or not such lanes are marked;

(20) "Operator." Every person who drives or is in actual physical control of a vehicle as herein defined;

(21) "Peace officer." Any officer authorized by law to execute criminal process or to make arrests for the violation of the statutes generally or of any particular statute or statutes relative to the highways of this state;

(22) "Pedestrian." Any person afoot or who is using a wheelchair, power wheelchair as defined in section 1 of this act, or a means of conveyance propelled by human power other than a bicycle;

(23) "Person." Every natural person, firm, copartnership, corporation, association, or organization;

(24) "Pneumatic tires." Every tire of rubber or other resilient material designed to be inflated with compressed air to support the load thereon;

(25) "Private road or driveway." Every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(26) "Highway." Every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(27) "Railroad." A carrier of persons or property upon vehicles, other than street cars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(28) "Railroad sign or signal." Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train;

(29) "Residence district." The territory contiguous to and including the highway, as herein defined, not comprising a business district, as herein defined, when the property on such highway for a continuous distance of three hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business;

(30) "Roadway." The paved, improved, or proper driving portion of a highway designed, or ordinarily used for vehicular travel;

(31) "Safety zone." The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise so as to be plainly discernible;

(32) "Sidewalk." That property between the curb lines or the lateral lines of a roadway, as herein defined, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(33) "Solid tire." Every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load thereon;

(34) "State highway." Every highway as herein defined, or part thereof, which has been designated as a state highway, or branch thereof, by legislative enactment;

(35) "Street car." A vehicle other than a train, as herein defined, for the transporting of persons or property and operated upon stationary rails principally within incorporated cities and towns;

(36) "Traffic." Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highways for purposes of travel;

(37) "Traffic control signal." Any traffic device, as herein defined, whether manually, electrically, or mechanically operated, by which traffic alternately is directed to stop or proceed or otherwise controlled;

(38) "Traffic devices." All signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic;

(39) "Train." A vehicle propelled by steam, electricity, or other motive power with or without cars coupled thereto, operated upon stationary rails, except street cars;

(40) "Vehicle." Every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting power wheelchairs, as defined in section 1 of this act, or devices moved by human or animal power or used exclusively upon stationary rails or tracks.

Words and phrases used herein in the past, present, or future tense shall include the past, present, and future tenses; words and phrases used herein in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context thereof shall indicate to the contrary.

Passed by the House April 21, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 142

[Substitute Senate Bill 5226]

OPTOMETRY

AN ACT Relating to optometric care and practice; and amending RCW 18.53.010, 18.53.140, 69.41.030, and 69.50.101.

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

Sec. 1. RCW 18.53.010 and 1989 c 36 s 1 are each amended to read as follows:

(1) The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The practice of optometry may include, but not necessarily be limited to, the following:

(a) The employment of any objective or subjective means or method, including the use of drugs (~~(topically applied to the eye)~~), for diagnostic and therapeutic purposes by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section, and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(b) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

(c) The prescription and provision of visual therapy, therapeutic aids, and other optical devices (~~(, and the treatment with topically applied drugs by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section)~~); and

(d) The ascertainment of the perceptive, neural, muscular, or pathological condition of the visual system; and

(e) The adaptation of prosthetic eyes.

(2)(a) Those persons using topical drugs for diagnostic purposes in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, (~~(and for therapeutic purposes, an additional minimum of seventy-five hours of didactic and clinical instruction)~~) as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for diagnostic (~~(and therapeutic)~~) purposes.

(b) Those persons using or prescribing topical drugs for therapeutic purposes in the practice of optometry must be certified under (a) of this subsection, and must have an additional minimum of seventy-five hours of didactic and clinical instruction as established b the board and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for therapeutic purposes.

(c) Those persons using or prescribing drugs administered orally for diagnostic or therapeutic purposes in the practice of optometry shall be certified under (b) of this subsection, and shall have an additional minimum of sixteen hours of didactic and eight hours of supervised clinical instruction as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to administer, dispense, or prescribe oral drugs for diagnostic or therapeutic purposes.

(d) Those persons administering epinephrine by injection for treatment of anaphylactic shock in the practice of optometry must be certified under (b) of this subsection and must have an additional minimum of four hours of didactic and supervised clinical instruction, as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board to administer epinephrine by injection.

(e) Such course or courses shall be the fiscal responsibility of the participating and attending optometrist.

(3) The board shall establish a ((schedule)) list of topical drugs for diagnostic and treatment purposes limited to the practice of optometry, and no person licensed pursuant to this chapter shall prescribe, dispense, purchase, possess, or administer drugs except as authorized and to the extent permitted by the board.

(4) The board must establish a list of oral Schedule III through V controlled substances and any oral legend drugs, with the approval of and after consultation with the board of pharmacy. No person licensed under this chapter may use, prescribe, dispense, purchase, possess, or administer these drugs except as authorized and to the extent permitted by the board. No optometrist may use, prescribe, dispense, or administer oral corticosteroids.

(a) The board, with the approval of and in consultation with the board of pharmacy, must establish, by rule, specific guidelines for the prescription and administration of drugs by optometrists, so that licensed optometrists and persons filling their prescriptions have a clear understanding of which drugs and which dosages or forms are included in the authority granted by this section.

(b) An optometrist may not:

(i) Prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition or for pain associated with or related to the trauma, episode, or condition; or

(ii) Prescribe an oral drug within ninety days following ophthalmic surgery unless the optometrist consults with the treating ophthalmologist.

(c) If treatment exceeding the limitation in (b)(i) of this subsection is indicated, the patient must be referred to a physician licensed under chapter 18.71 RCW.

(d) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs appropriate to treatment of diseases or conditions of the human eye and the adnexa that are within the scope of practice of optometry. The prescription or administration of drugs for any other purpose is not authorized by this section.

(5) The board shall develop a means of identification and verification of optometrists certified to use therapeutic drugs for the purpose of issuing prescriptions as authorized by this section.

(6) Nothing in this chapter may be construed to authorize the use, prescription, dispensing, purchase, possession, or administration of any Schedule I or II controlled substance. The provisions of this subsection must be strictly construed.

(7) With the exception of the administration of epinephrine by injection for the treatment of anaphylactic shock, no injections or infusions may be administered by an optometrist.

(8) Nothing in this chapter may be construed to authorize optometrists to perform ophthalmic surgery. Ophthalmic surgery is defined as any invasive procedure in which human tissue is cut, ablated, or otherwise penetrated by incision, injection, laser, ultrasound, or other means, in order to: Treat human eye diseases; alter or correct refractive error or alter or enhance cosmetic appearance. Nothing in this chapter limits an optometrist's ability to use diagnostic instruments utilizing laser or ultrasound technology. Ophthalmic surgery, as defined in this subsection, does not include removal of superficial ocular foreign bodies, epilation of misaligned eyelashes, placement of punctal or lacrimal plugs, diagnostic dilation and irrigation of the lacrimal system, orthokeratology, prescription and fitting of contact lenses with the purpose of altering refractive error, or other similar procedures within the scope of practice of optometry.

Sec. 2. RCW 18.53.140 and 1991 c 3 s 138 are each amended to read as follows:

It shall be unlawful for any person:

- (1) To sell or barter, or offer to sell or barter any license issued by the secretary; or
- (2) To purchase or procure by barter any license with the intent to use the same as evidence of the holder's qualification to practice optometry; or
- (3) To alter with fraudulent intent in any material regard such license; or
- (4) To use or attempt to use any such license which has been purchased, fraudulently issued, counterfeited or materially altered as a valid license; or
- (5) To practice optometry under a false or assumed name, or as a representative or agent of any person, firm or corporation with which the licensee has no connection: PROVIDED, Nothing in this chapter nor in the optometry law shall make it unlawful for any lawfully licensed optometrist or association of lawfully licensed optometrists to practice optometry under the name of any lawfully licensed optometrist who may transfer by inheritance or otherwise the right to use such name; or
- (6) To practice optometry in this state either for him or herself or any other individual, corporation, partnership, group, public or private entity, or any member of the licensed healing arts without having at the time of so doing a valid license issued by the secretary of health; or
- (7) To in any manner barter or give away as premiums either on his or her own account or as agent or representative for any other purpose, firm or corporation, any eyeglasses, spectacles, lenses or frames; or
- (8) To use drugs in the practice of optometry, except ~~((those typically applied for diagnostic or therapeutic purposes))~~ as authorized under RCW 18.53.010; or
- (9) To use advertising whether printed, radio, display, or of any other nature, which is misleading or inaccurate in any material particular, nor shall any such person in any way misrepresent any goods or services (including but without limitation, its use, trademark, grade, quality, size, origin, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted; or

(10) To advertise the "free examination of eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey the impression to the public that eyes are examined free or of a character tending to deceive or mislead the public, or in the nature of "bait advertising;" or

(11) To use an advertisement of a frame or mounting which is not truthful in describing the frame or mounting and all its component parts. Or advertise a frame or mounting at a price, unless it shall be depicted in the advertisement without lenses inserted, and in addition the advertisement must contain a statement immediately following, or adjacent to the advertised price, that the price is for frame or mounting only, and does not include lenses, eye examination and professional services, which statement shall appear in type as large as that used for the price, or advertise lenses or complete glasses, viz.: frame or mounting with lenses included, at a price either alone or in conjunction with professional services; or

(12) To use advertising, whether printed, radio, display, or of any other nature, which inaccurately lays claim to a policy or continuing practice of generally underselling competitors; or

(13) To use advertising, whether printed, radio, display or of any other nature which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services; or

(14) To use advertising whether printed, radio, display, or of any other nature, which states any definite amount of money as "down payment" and any definite amount of money as a subsequent payment, be it daily, weekly, monthly, or at the end of any period of time.

Sec. 3. RCW 69.41.030 and 1996 c 178 s 17 are each amended to read as follows:

It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, 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 commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug

manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

Sec. 4. RCW 69.50.101 and 1998 c 222 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

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

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

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

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

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

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

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(f)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010, 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, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(z) "Secretary" means the secretary of health or the secretary's designee.

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "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 Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy.

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 by the Senate March 11, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 143

[Engrossed Substitute Senate Bill 5942]

ELEVATOR CONTRACTORS

AN ACT Relating to licensing requirements for elevator mechanics and contractors; amending RCW 70.87.230, 70.87.240, 70.87.220, 70.87.010, 70.87.020, 70.87.030, 70.87.050, 70.87.060, 70.87.080, 70.87.100, 70.87.125, 70.87.145, 70.87.170, 70.87.180, 70.87.200, 70.87.250, and 70.87.260; adding new sections to chapter 70.87 RCW; creating a new section; prescribing penalties; providing an expiration date; and declaring an emergency.

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

PART I - LICENSING REQUIREMENTS

Sec. 1. RCW 70.87.230 and 2002 c 98 s 10 are each amended to read as follows:

~~((No person shall erect, construct, wire, alter, replace, maintain, remove, or dismantle any conveyance contained within a building or structures within the jurisdiction of this))~~ Except as provided in section 4 of this act, a person may not perform conveyance work within the state unless he or she ((has)) is an elevator mechanic ((license and the person)) who is regularly employed by and is working: (1) For an owner exempt from licensing requirements under section 4 of this act and performing maintenance; (2) for a public agency performing maintenance; or (3) under the direct supervision of ((a person, firm, or company who has an elevator contractors [contractor] license pursuant to this chapter)) an elevator contractor. A person, firm, public agency, or company is not required to ~~((have an elevator contractors [contractor] license))~~ be an elevator contractor for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person.

Sec. 2. RCW 70.87.240 and 2002 c 98 s 12 are each amended to read as follows:

(1) Any person, firm, public agency, or company wishing to engage in the business of ~~((installing, altering, servicing, replacing, or maintaining elevators, dumbwaiters, escalators, or moving sidewalks))~~ performing conveyance work within the ((jurisdiction)) state must ((make application)) apply for ((a)) an elevator contractor license with the department on a form provided by the department and be a registered general or specialty contractor under chapter 18.27 RCW.

(2) Except as provided by section 4 of this act, any person wishing to ((engage in installing, altering, repairing, or servicing elevators, dumbwaiters, escalators, or moving sidewalks)) perform conveyance work within the ((jurisdiction)) state must ((make application)) apply for ((a)) an elevator mechanic license with the department on a form provided by the department.

(3) ~~((No))~~ An elevator contractor license may not be granted to any person or firm who ((has not proven to)) does not possess the following qualifications:

(a) Five years' ~~((work))~~ experience ~~((in the elevator industry in construction, maintenance, and service or repair))~~ performing conveyance work, as verified by current and previous elevator contractors ~~((licenses))~~ licensed to do business; or

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(4) ~~((No))~~ Except as provided in subsection (5) of this section and section 3 of this act, an elevator mechanic license may not be granted to any person who ~~((has not proven to))~~ does not possess the following qualifications:

(a) An acceptable combination of documented experience and education credits: Not less than three years' ~~((work))~~ experience ~~((in the elevator industry, in construction, or maintenance and service or repair))~~ performing conveyance work, as verified by current and previous employers licensed to do business in this state or public agency employers; and

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(5) Any person who furnishes the department with acceptable proof that he or she has ~~((worked as an elevator constructor, or as a maintenance or repair person))~~ performed conveyance work in the category for which a license is sought shall upon making application for a license and paying the license fee ~~((is entitled to))~~ receive a license without an examination. The person must have:

(a) Worked without direct and immediate supervision for ~~((an elevator contractor licensed to do business))~~ a general or specialty contractor registered under chapter 18.27 RCW and engaged in the business of performing conveyance work in this state. This employment may not be less than each and all of the three years immediately before ~~((June 13, 2002))~~ March 1, 2004. The person must ~~((make application within one year of June 13, 2002))~~ apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(b) Worked without direct and immediate supervision for an owner exempt from licensing requirements under section 4 of this act or a public agency as an individual responsible for maintenance of conveyances owned by the owner exempt from licensing requirements under section 4 of this act or the public agency. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(c) Obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the national elevator industry educational program or its equivalent; or

~~((e))~~ (d) Obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of this chapter, and registered with the Washington state apprenticeship and training council.

(6) A license must be issued to an individual holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of this chapter, upon application and without examination.

NEW SECTION. Sec. 3. A new section is added to chapter 70.87 RCW to read as follows:

CATEGORIES OF LICENSURE. A material lift mechanic license to perform conveyance work on material lifts subject to WAC 296-96-05010 may be granted to any person who possesses the following qualifications:

(1) The person: (a) Must be employed by an elevator contractor that complies with subsections (2) and (3) of this section; (b) must have successfully completed the training described in subsection (2) of this section; and (c) after successfully completing such training, must have passed a written examination administered by the department that is designed to demonstrate competency with regard to conveyance work on material lifts;

(2) The employer must provide the persons specified in subsection (1) of this section adequate training, including any training provided by the manufacturer, ensuring worker safety and adherence to the published operating specifications of the conveyance manufacturer; and

(3) The employer must maintain: (a) A conveyance work log identifying the equipment, describing the conveyance work performed, and identifying the person who performed the conveyance work; (b) a training log describing the course of study applicable to each conveyance and identifying each employee who has successfully completed the training described in subsection (2) of this section and when such training was completed; and (c) a record evidencing that the employer has notified the conveyance owner in writing that the conveyance is not designed to, is not intended to, and should not be used to convey workers.

NEW SECTION. Sec. 4. A new section is added to chapter 70.87 RCW to read as follows:

EXEMPTIONS FROM LICENSURE. (1) The licensing requirements of this chapter do not apply to the maintenance of conveyances specified in (a) of this subsection if a person specified in (b) of this subsection performs the maintenance and the owner complies with the requirements specified in (c) and (d) of this subsection.

(a) The conveyance: (i) Must be a conveyance other than a passenger elevator to which the general public has access; and (ii) must be located in a facility in which agricultural products are stored, food products are processed, goods are manufactured, energy is generated, or similar industrial or agricultural processes are performed.

(b) The person performing the maintenance: (i) Must be regularly employed by the owner; (ii) must have completed the training described in (c) of this subsection; and (iii) must have attained journey level status in an electrical or mechanical trade, but only if the employer has or uses an established journey level program to train its electrical or mechanical trade employees and the employees perform maintenance in the course of their regular employment.

(c) The owner must provide the persons specified in (b) of this subsection adequate training to ensure worker safety and adherence to the published operating specifications of the conveyance manufacturer, the applicable provisions of this chapter, and any rules adopted under this chapter.

(d) The owner also must maintain both a maintenance log and a training log. The maintenance log must describe maintenance work performed on the conveyance and identify the person who performed the work. The training log

must describe the course of study provided to the persons specified in (b) of this subsection, including whether it is general or conveyance specific, and when the persons completed the course of study.

(2) It is a violation of chapter 49.17 RCW for an owner or an employer: (a) To allow a conveyance exempt from the licensing requirements of this chapter under subsection (1) of this section to be maintained by a person other than a person specified in subsection (1)(b) of this section or a licensee; or (b) to fail to maintain the logs required under subsection (1)(d) of this section.

NEW SECTION. Sec. 5. A new section is added to chapter 70.87 RCW to read as follows:

In order to effectively administer and implement the elevator mechanic licensing of this chapter, the department may establish elevator mechanic license categories in rule.

NEW SECTION. Sec. 6. A new section is added to chapter 70.87 RCW to read as follows:

The department of labor and industries may not adopt rules to implement chapter 98, Laws of 2002, and to implement this act that take effect before March 1, 2004.

PART II - ADVISORY COMMITTEE

Sec. 7. RCW 70.87.220 and 2002 c 98 s 11 are each amended to read as follows:

(1) The department may adopt the rules necessary to establish and administer the elevator safety advisory committee. The purpose of the advisory committee is to advise the department on the adoption of rules that apply to conveyances; methods of enforcing and administering this chapter; and matters of concern to the conveyance industry and to the individual installers, owners, and users of conveyances.

(2) The advisory committee shall consist((s)) of ~~((five))~~ seven persons ~~((appointed by))~~. The director of the department or his or her designee with the advice of the chief elevator inspector shall appoint the committee members as follows:

(a) One representative of licensed elevator contractors;

(b) One representative of elevator mechanics licensed to perform all types of conveyance work;

(c) One representative of owner-employed mechanics exempt from licensing requirements under section 4 of this act;

(d) One registered architect or professional engineer representative;

(e) One building owner or manager representative;

(f) One registered general commercial contractor representative; and

(g) One ad hoc member representing a municipality maintaining jurisdiction of conveyances in accordance with RCW 70.87.210.

(3) The committee members shall serve terms of four years.

(4) The committee shall meet on the third Tuesday of February, May, August, and November of each year, and at other times at the discretion of the chief ~~((of the))~~ elevator ~~((section))~~ inspector. The committee members shall serve without per diem or travel expenses.

(5) The chief elevator inspector shall be the secretary for the advisory committee.

NEW SECTION. Sec. 8. A new section is added to chapter 70.87 RCW to read as follows:

(1) The elevator safety advisory committee shall review this chapter as it pertains to the regulation of private residence conveyances. The advisory committee shall report its findings and recommendations to the legislature by January 1, 2004. Until July 1, 2004, the licensing requirements of this chapter do not apply to conveyance work on private residential conveyances if the person performing the conveyance work is working at the direction of the owner, and the owner resides in the residence at which the conveyance is located. This section shall not be construed as modifying any other requirements of this chapter applicable to private residential conveyances.

(2) This section expires July 1, 2004.

PART III - DEFINITIONS

Sec. 9. RCW 70.87.010 and 2002 c 98 s 1 are each amended to read as follows:

For the purposes of this chapter, except where a different interpretation is required by the context:

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise;

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section;

(3) "Existing installations" means an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter;

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) ~~(has no)~~ does not have a landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means ~~((an elevator, as defined by subsections (2) and (4) of this section,))~~ a conveyance that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities;

(5) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which

does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which ~~((no))~~ persons are not normally stationed on any level except the receiving level;

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor;

(10) "Department" means the department of labor and industries;

(11) "Director" means the director of the department or his or her representative;

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200;

(13) "Permit" means a permit issued by the department: (a) To ~~((construct, install,))~~ perform conveyance work, other than maintenance; or (b) to operate a conveyance;

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual;

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings;

(16) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another;

(17) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoists;

(18) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public;

(19) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings;

(20) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by physically handicapped persons;

(21) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by physically handicapped persons;

(22) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials;

(23) "Advisory committee" means the elevator advisory committee as described in this chapter;

(24) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice;

(25) "Elevator contractor" means any person, firm, or company that possesses an elevator contractor license in accordance with this chapter and who is engaged in the business of performing conveyance work covered by this chapter;

~~(26)~~ "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this chapter and who is engaged in ~~((erecting, constructing, installing, altering, serving [servicing], repairing, or maintaining elevators or related conveyances))~~ performing conveyance work covered by this chapter;

~~((26))~~ ~~(27)~~ "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of ~~((erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances))~~ performing conveyance work or to perform conveyance work covered by this chapter;

~~((27))~~ ~~(28)~~ "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in RCW 70.87.240;

~~((28))~~ ~~(29)~~ "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in RCW 70.87.240;

~~((29))~~ ~~(30)~~ "Licensee" means the elevator mechanic or elevator contractor;

~~(31)~~ "Conveyance work" means the alteration, construction, dismantling, erection, installation, maintenance, relocation, and wiring of a conveyance;

~~(32)~~ "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement;

~~(33)~~ "Maintenance" means a process of routine examination, lubrication, cleaning, servicing, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with this chapter. "Maintenance" includes repair and replacement, but not alteration;

~~(34)~~ "Repair" means the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with this chapter;

~~(35)~~ "Replacement" means the substitution of a device, component, and/or subsystem in its entirety with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with this chapter;

~~(36)~~ "Public agency" means a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision, or other public agency and includes any department, bureau, office, board, commission or institution of such public entities;

(37) "Platform" means a rigid surface that is maintained in a horizontal position at all times when in use, and upon which passengers stand or a load is carried.

PART IV - TECHNICAL AMENDMENTS

Sec. 10. RCW 70.87.020 and 2002 c 98 s 2 are each amended to read as follows:

(1) The purpose of this chapter is to provide for safety of life and limb, to promote safety awareness, and to ensure the safe((;)) design, mechanical and electrical operation, ~~((erection, installation, alteration, maintenance, inspection, and repair of conveyances))~~ and inspection of conveyances, and performance of conveyance work, and all such operation, ~~((erection, installation, alteration,))~~ inspection, and ~~((repair))~~ conveyance work subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, and rules of the department. The use of unsafe and defective ~~((lifting devices))~~ conveyances imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. ~~((Elevator))~~ Personnel performing work covered by this chapter must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment. Training and experience must include, but not be limited to, recognizing the safety hazards and performing the procedures to which ~~((they))~~ the personnel performing conveyance work covered by this chapter are assigned in conformance with the requirements of ~~((the [this]))~~ this chapter. This chapter establishes the minimum standards for ~~((elevator))~~ personnel performing conveyance work.

(2) This chapter is not intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by this chapter, provided that there is technical documentation to demonstrate the equivalency of the system, method, or device, as prescribed in this chapter and the rules adopted under this chapter.

(3) In any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules of the department is prima facie evidence that the ~~((operation, erection, installation, alteration, maintenance, inspection, and repair of the))~~ conveyance work, operation, and inspection is reasonably safe to persons and property.

Sec. 11. RCW 70.87.030 and 2002 c 98 s 3 are each amended to read as follows:

The department shall adopt rules governing the mechanical and electrical operation, ~~((erection, installation, alterations, inspection,))~~ acceptance tests, ~~((and repair of conveyances))~~ conveyance work, operation, and inspection that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for ~~((the safe mechanical operation, erection, installation, alteration, inspection, and repair of~~

~~conveyances~~) safe conveyance work, operation, and inspection, including the American National Standards Institute Safety Code for Personnel and Material Hoists, the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

The department may consult with: Engineering authorities and organizations concerned with standard safety codes; rules and regulations governing ~~((the operation, maintenance, servicing, construction, alteration, installation, and/or inspection of elevators, dumbwaiters, and escalators, etcetera))~~ conveyance work, operation, and inspection; and the qualifications that are adequate, reasonable, and necessary for the elevator mechanic, contractor, and inspector.

Sec. 12. RCW 70.87.050 and 2002 c 98 s 4 are each amended to read as follows:

The ~~((operation, erection, installation, alteration, maintenance, inspection, and repair))~~ conveyance work on, and the operation and inspection of any conveyance located in, or used in connection with, any building owned by the state, a county, or a political subdivision, other than those located within and owned by a city having an elevator code, shall be under the jurisdiction of the department.

Sec. 13. RCW 70.87.060 and 1983 c 123 s 6 are each amended to read as follows:

(1) The person ~~((installing, relocating, or altering a))~~, elevator contractor, or public agency performing conveyance work is responsible for ~~((its))~~ operation and maintenance of the conveyance until the department has issued an operating permit for the conveyance, except during the period when a limited operating permit in accordance with RCW 70.87.090(2) is in effect, and is also responsible for all tests of a new, relocated, or altered conveyance until the department has issued an operating permit for the conveyance.

(2) The owner or his or her duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the department has issued the operating permit and also during the period of effectiveness of any limited operating permit in accordance with RCW 70.87.090(2). The owner shall be responsible for all periodic tests required by the department.

Sec. 14. RCW 70.87.080 and 1983 c 123 s 8 are each amended to read as follows:

(1) ~~((An installation))~~ A permit shall be obtained from the department before ~~((erecting, installing, relocating, or altering)) performing work, other than maintenance, on a conveyance under the jurisdiction of the department.~~

(2) The installer of the conveyance shall submit an application for the permit in duplicate, in a form that the department may prescribe.

(3) The permit issued by the department shall be kept posted conspicuously at the site of installation.

(4) ~~((No))~~ A permit is not required for ~~((repairs and replacement normally necessary for maintenance and made with parts of equivalent materials, strength, and design))~~ maintenance.

(5) After the effective date of rules adopted under this chapter establishing licensing requirements, the department may issue a permit for conveyance work only to an elevator contractor unless the permit is for conveyance work on private residence conveyances. After July 1, 2004, the department may not issue a permit for conveyance work on private residence conveyances to a person other than an elevator contractor.

Sec. 15. RCW 70.87.100 and 2002 c 98 s 5 are each amended to read as follows:

(1) All ~~((new))~~ conveyance installations, relocations, or alterations must be performed by ~~((a person, firm, or company to which a license to install, relocate, or alter conveyances has been issued))~~ an elevator contractor employing an elevator mechanic.

(2) ~~The ((person or firm installing, relocating, or altering a))~~ elevator contractor employing an elevator mechanic performing such conveyance work shall notify the department before completion of the work, and shall subject the new, moved, or altered portions of the conveyance to the acceptance tests.

(3) All new, altered, or relocated conveyances for which a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an authorized representative of the department. The authorized representative shall also witness the test specified.

Sec. 16. RCW 70.87.125 and 2002 c 98 s 6 are each amended to read as follows:

(1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

- (a) Any false statement as to a material matter in the application;
- (b) Fraud, misrepresentation, or bribery in securing a license;
- (c) Failure to notify the department and the owner or lessee of ~~((an elevator))~~ a conveyance or related mechanisms of any condition not in compliance with this chapter; ~~((and))~~

(d) A violation of any provisions of this chapter; and

If the elevator contractor does not employ an individual designated as the primary point of contact with the department and who has successfully completed the elevator contractor examination. In the case of a separation of employment, termination of this relationship or designation, or death of the designated individual, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination.

(2) The department may suspend or revoke a permit if:

(a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been ~~((constructed, installed, maintained, or repaired))~~ worked on in accordance with ~~((the requirements of))~~ this chapter; or

(c) The conveyance has become unsafe.

(3) The department shall suspend any license issued under this chapter promptly after receiving notice from the department of social and health services that the holder of the license has been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a support order. If the person has continued to meet all other license requirements 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 person is in compliance with the order.

(4) The department shall notify in writing the owner, licensee, or person ~~((installing the conveyance))~~ performing conveyance work, of its action and the reason for the action. The department shall send the notice by certified mail to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

~~((4))~~ (5)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the ~~((elevator personnel))~~ licensee performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or the conveyance work is not ~~((constructed, installed, maintained, or repaired))~~ permitted and performed in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

~~((5))~~ (6) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

~~((6))~~ (7) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter.

Sec. 17. RCW 70.87.145 and 2002 c 98 s 7 are each amended to read as follows:

(1) An authorized representative of the department may order the owner or person operating a conveyance to discontinue the operation of a conveyance, and may place a notice that states that the conveyance may not be operated on a conspicuous place in the conveyance, if ~~((the conveyance))~~:

(a) The conveyance work has not been ~~((constructed, installed, maintained, or repaired))~~ permitted and performed in accordance with ~~((the requirements of))~~ this chapter; or

(b) The conveyance has otherwise become unsafe.
The order is effective immediately, and shall not be stayed by a request for a hearing.

(2) The department shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe, and shall inform the owner or operator that he or she may

request a hearing pursuant to RCW 70.87.170. A request for a hearing does not stay the effect of the order.

(3) The department shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(4) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or removes a notice not to operate, is:

(a) Guilty of a misdemeanor; and

(b) Subject to a civil penalty under RCW 70.87.185.

(5) The department may conduct random on-site inspections and tests on existing installations, witnessing periodic inspections and testing in order to ensure satisfactory (~~(performance by licensed)~~) conveyance work by persons, firms, or companies performing conveyance work, and assist in development of public awareness programs.

Sec. 18. RCW 70.87.170 and 2002 c 98 s 8 are each amended to read as follows:

(1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit or license; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice (~~(to be)~~) of the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked. The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department. The department shall refund the two hundred dollars if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the two hundred dollars.

If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

(2) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW.

Sec. 19. RCW 70.87.180 and 2002 c 98 s 9 are each amended to read as follows:

(1) The (~~(construction, installation, relocation, alteration, maintenance, or)~~) performance of conveyance work, other than maintenance, or the operation of a conveyance without a permit by any person owning or having the custody, management, or operation thereof, except as provided in RCW 70.87.080 and 70.87.090, is a misdemeanor. Each day of violation is a separate offense. (~~(No)~~) A prosecution may not be maintained (~~(where)~~) if a person has requested the issuance or renewal of a permit (~~(has been requested but upon which no action has been taken by)~~) but the department has not acted.

(2) The (~~(construction, installation, relocation, alteration, maintenance, or operation of a conveyance)~~) performance of conveyance work, other than the maintenance of conveyances as specified in section 4 of this act, without a license by any person is a misdemeanor. Each day of violation is a separate offense. (~~(No)~~) A prosecution may not be maintained (~~(where)~~) if a person has requested the issuance or renewal of a license (~~(has been requested by an~~

applicant but upon which no action has been taken by)) but the department has not acted.

Sec. 20. RCW 70.87.200 and 1983 c 123 s 22 are each amended to read as follows:

(1) The provisions of this chapter do not apply where:

(a) A conveyance is permanently removed from service or made effectively inoperative; or

(b) Lifts, man hoists, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a workman stationed at the hoisting machine.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963 may continue to assume jurisdiction over ~~((the operation, erection, installation, alteration, or repair of elevators, escalators, dumbwaiters, moving walks, manlifts, and parking elevators))~~ conveyance work and may inspect, issue permits, collect fees, and prescribe minimum requirements for ~~((the construction, design, use, and maintenance of conveyances))~~ conveyance work and operation if the requirements are equal to the requirements of this chapter and to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department.

Sec. 21. RCW 70.87.250 and 2002 c 98 s 13 are each amended to read as follows:

(1) Upon approval of an application, the department may issue a license that is ~~((biannually {biennially}))~~ biennially renewable. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular ~~((elevators))~~ conveyance or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license ~~((must))~~ may be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may apply for a waiver from the department. This will be on a form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and these records must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section.

Sec. 22. RCW 70.87.260 and 2002 c 98 s 14 are each amended to read as follows:

This chapter cannot be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, ~~((maintaining, erecting, constructing, installing, altering, inspecting, testing, or repairing any elevator))~~ testing, inspecting, or performing conveyance work on any conveyance or other related mechanisms covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefore or any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising hereunder.

PART V - EFFECTIVE DATE

NEW SECTION. **Sec. 23.** Part headings and captions used in this act are not any part of the law.

NEW SECTION. **Sec. 24.** 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 by the Senate April 22, 2003.

Passed by the House April 17, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 144

[Engrossed Substitute House Bill 1640]

WATER BANKING

AN ACT Relating to authorizing water banking within the trust water program; amending RCW 90.42.005; adding new sections to chapter 90.42 RCW; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 90.42.005 and 1991 c 347 s 1 are each amended to read as follows:

(1) It is the policy of the state of Washington to recognize and preserve water rights in accordance with RCW 90.03.010.

(2) The legislature finds that:

(a) The state of Washington is faced with a shortage of water with which to meet existing and future needs, particularly during the summer and fall months and in dry years when the demand is greatest;

(b) Consistent with RCW 90.54.180, issuance of new water rights, voluntary water transfers, and conservation and water use efficiency programs, including storage, ~~((should be the preferred))~~ all are acceptable methods of addressing water uses because they can relieve current critical water situations, provide for presently unmet needs, and assist in meeting future water needs. Presently unmet needs or current needs includes the water required to increase the frequency of occurrence of base or minimum flow levels in streams of the state, the water necessary to satisfy existing water rights, or the water necessary to provide full supplies to existing water systems with current supply deficiencies; ~~((and))~~

(c) The interests of the state and its citizens will be served by developing programs and regional water resource plans, in cooperation with local governments, federally recognized tribal governments, appropriate federal agencies, private citizens, and the various water users and water interests in the state, that increase the overall ability to manage the state's waters in order to resolve conflicts and to better satisfy both present and future needs for water; and

(d) Water banking as a function of the trust water program and as authorized by this chapter can provide an effective means to facilitate the voluntary transfer of water rights established through conservation, purchase, lease, or donation, to preserve water rights and provide water for presently unmet and future needs; and to achieve a variety of water resource management objectives throughout the state, including drought response, improving streamflows on a voluntary basis, providing water mitigation, or reserving water supply for future uses.

NEW SECTION. Sec. 2. A new section is added to chapter 90.42 RCW to read as follows:

(1) The department is hereby authorized to use the trust water rights program in the Yakima river basin for water banking purposes.

(2) Water banking may be used for one or more of the following purposes:

(a) To authorize the use of trust water rights to mitigate for water resource impacts, future water supply needs, or any beneficial use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or

in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users;

(b) To document transfers of water rights to and from the trust water rights program; and

(c) To provide a source of water rights the department can make available to third parties on a temporary or permanent basis for any beneficial use under chapter 90.03, 90.44, or 90.54 RCW.

(3) The department shall not use water banking to:

(a) Cause detriment or injury to existing rights;

(b) Issue temporary water rights or portions thereof for new potable uses requiring an adequate and reliable water supply under RCW 19.27.097;

(c) Administer federal project water rights, including federal storage rights; or

(d) Allow carryover of stored water from one water year to another water year.

(4) For purposes of this section and section 6 of this act, "total water supply available" shall be defined as provided in the 1945 consent decree between the United States and water users in the Yakima river basin, and consistent with later interpretation by state and federal courts.

NEW SECTION. Sec. 3. A new section is added to chapter 90.42 RCW to read as follows:

(1) The department, with the consent of the water right holder, may identify trust water rights for administration for water banking purposes, including trust water rights established before the effective date of this section.

(2) An application to transfer a water right to the trust water program shall be reviewed under RCW 90.03.380 at the time the water right is transferred to the trust water program for administration for water banking purposes, and notice of the application shall be published by the applicant as provided under RCW 90.03.280. The application must indicate the reach or reaches of the stream where the trust water right will be established before the transfer of the water right or portion thereof from the trust water program, and identify reasonably foreseeable future temporary or permanent beneficial uses for which the water right or portion thereof may be used by a third party upon transfer from the trust water right program. In the event the future place of use, period of use, or other elements of the water right are not specifically identified at the time of the transfer into the trust water program, another review under RCW 90.03.380 will be necessary at the time of a proposed transfer from the trust water program.

NEW SECTION. Sec. 4. A new section is added to chapter 90.42 RCW to read as follows:

(1) The department shall transfer a water right or portion thereof being administered for water banking purposes from the trust water program to a third party upon occurrence of all of the following:

(a) The department receives a request for transfer of a water right or portion thereof currently administered by the department for water banking purposes;

(b) The request is consistent with any previous review under RCW 90.03.380 of the water right and future temporary or permanent beneficial uses;

(c) The request is consistent with any condition, limitation, or agreement affecting the water right, including but not limited to any trust water right transfer agreement executed at the time the water right was transferred to the trust water rights program; and

(d) The request is accompanied by and is consistent with an assignment of interest or portion thereof from a person or entity retaining an interest in the trust water right or portion thereof to the party requesting transfer of the water right or portion thereof.

(2) The priority date of the water right or portion thereof transferred by the department from the trust water program for water banking purposes shall be the priority date of the underlying water right.

(3) The department shall issue documentation for that water right or portion thereof to the new water right holder based on the requirements applicable to the transfer of other water rights from the trust water rights program. Such documentation shall include a description of the property to which the water right will be appurtenant after the water right or portion thereof is transferred from the trust water program to a third party.

(4) The department's decision on the transfer of a water right or portion thereof from the trust water program for water banking purposes may be appealed to the pollution control hearings board under RCW 43.21B.230, or to a superior court conducting a general adjudication under RCW 90.03.210.

NEW SECTION. Sec. 5. A new section is added to chapter 90.42 RCW to read as follows:

(1) The department shall seek input from agricultural organizations, federal agencies, tribal governments, local governments, watershed groups, conservation groups, and developers on water banking, including water banking procedures and identification of areas in Washington state where water banking could assist in providing water supplies for instream and out-of-stream uses. The department shall summarize any comments received on water banking and submit a report, including any recommendations, to the appropriate committees of the legislature for their consideration in the subsequent legislative session.

(2) By December 31st of every even-numbered year, the department shall submit a report to the appropriate committees of the legislature on water banking activities authorized under section 2 of this act. The report shall:

(a) Evaluate the effectiveness of water banking in meeting the policies and objectives of this chapter;

(b) Describe any statutory, regulatory, or other impediments to water banking in other areas of the state; and

(c) Identify other basins or regions that may benefit from authorization for the department to use the trust water program for water banking purposes.

NEW SECTION. Sec. 6. A new section is added to chapter 90.42 RCW to read as follows:

Nothing in this act shall:

(1) Cause detriment or injury to existing rights or to the operation of the federal Yakima project to provide water for irrigation purposes, existing water supply contracts, or existing water rights;

(2) Diminish in any way existing rights or the total water supply available for irrigation and other purposes in the Yakima basin;

(3) Affect or modify the authority of a court conducting a general adjudication pursuant to RCW 90.03.210; or

(4) Affect or modify the rights of any person or entity under a water rights adjudication or under any order of the court conducting a water rights adjudication.

NEW SECTION. Sec. 7. Nothing in this act may be construed to:

(1) Affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under state or federal law;

(2) Affect or modify the rights or jurisdictions of the United States, the state of Washington, the Yakama Nation, or other person or entity over waters of any river or stream or over any ground water resource;

(3) Alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the states;

(4) Alter, establish, or impair the respective rights of states, the United States, the Yakama Nation, or any other person or entity with respect to any water or water-related right;

(5) Alter, diminish, or abridge the rights and obligations of any federal, state, or local agency, the Yakama Nation, or other person or entity;

(6) Affect or modify the rights of the Yakama Indian Nation or its successors in interest to, and management and regulation of, those water resources arising or used, within the external boundaries of the Yakama Indian Reservation;

(7) Affect or modify the settlement agreement between the United States and the state of Washington filed in Yakima county superior court with regard to federal reserved water rights other than those rights reserved by the United States for the benefit of the Yakama Indian Nation and its members; or

(8) Affect or modify the rights of any federal, state, or local agency, the Yakama Nation, or any other person or entity, public or private, with respect to any unresolved and unsettled claims in any water right adjudications, or court decisions, including *State v. Acquavella*, or constitute evidence in any such proceeding in which any water or water-related right is adjudicated.

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

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 145

[House Bill 2183]

SEWER, WATER PROJECTS—BIDDING

AN ACT Relating to the amount allowed for unbid sewer and water projects; and amending RCW 57.08.050.

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

Sec. 1. RCW 57.08.050 and 2000 c 138 s 212 are each amended to read as follows:

(1) All work ordered, the estimated cost of which is in excess of ~~((five))~~ ten thousand dollars, shall be let by contract 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.

(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.

Passed by the House April 21, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 146

[Substitute Senate Bill 5995]

COLLECTIVE BARGAINING—CONSTRUCTION TRADES

AN ACT Relating to collective bargaining agreements in the construction trades concerning meal and rest periods; and amending RCW 49.12.187.

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

Sec. 1. RCW 49.12.187 and 1973 2nd ex.s. c 16 s 18 are each amended to read as follows:

This chapter shall not be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment. However, rules adopted under this chapter regarding appropriate rest and meal periods as applied to employees in the construction trades may be superseded by a collective bargaining agreement negotiated under the national labor relations act, 29 U.S.C. Sec. 151 et seq., if the terms of the collective bargaining agreement covering such employees specifically require rest and meal periods and prescribe requirements concerning those rest and meal periods.

Passed by the Senate April 22, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 147

[Engrossed Senate Bill 6062]

TRANSPORTATION FUNDING

AN ACT Relating to authorizing bonds for transportation funding; amending RCW 39.42.060 and 35.95A.120; adding new sections to chapter 47.10 RCW; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. In order to provide funds necessary for the location, design, right of way, and construction of selected projects or improvements that are identified as transportation 2003 projects or improvements in the omnibus transportation budget, there shall be issued and

sold upon the request of the transportation commission a total of two billion six hundred million dollars of general obligation bonds of the state of Washington.

NEW SECTION. Sec. 2. Upon the request of the transportation commission, as appropriate, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in this act in accordance with chapter 39.42 RCW. Bonds authorized by this act shall be sold in the manner, at time or times, in amounts, and at the price as the state finance committee shall determine. No bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

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

NEW SECTION. Sec. 3. The proceeds from the sale of bonds authorized by section 1 of this act shall be deposited in the transportation 2003 account (nickel account) in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in section 1 of this act, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

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

NEW SECTION. Sec. 5. Both principal and interest on the bonds issued for the purposes of sections 1 through 6 of this act shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the transportation 2003 account (nickel account) in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by sections 1 through 6 of this act shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle

and special fuels and that is distributed to the transportation 2003 account (nickel account) in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the transportation 2003 account (nickel account) proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the transportation 2003 account (nickel account) not required for bond retirement or interest on the bonds.

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

NEW SECTION. Sec. 7. For the purpose of providing funds for the planning, design, construction, reconstruction, and other necessary costs for transportation projects, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of three hundred forty-nine million five hundred thousand dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

NEW SECTION. Sec. 8. The proceeds of the sale of the bonds authorized in section 7 of this act must be deposited in the multimodal transportation account and must be used exclusively for the purposes specified in section 7 of this act and for the payment of expenses incurred in the issuance and sale of the bonds.

NEW SECTION. Sec. 9. (1) The nondebt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in section 7 of this act.

(2)(a) The state finance committee must, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in section 7 of this act.

(b) On or before the date on which any interest or principal and interest is due, the state treasurer shall transfer from the multimodal transportation account for deposit into the nondebt-limit reimbursable bond retirement account the amount computed in (a) of this subsection for bonds issued for the purposes of section 7 of this act.

(3) If the multimodal transportation account has insufficient revenues to pay the principal and interest computed in subsection (2)(a) of this section, then the

debt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in section 7 of this act from any additional means provided by the legislature.

(4) If at any time the multimodal transportation account has insufficient revenues to repay the bonds, the legislature may provide additional means for the payment of the bonds.

NEW SECTION. Sec. 10. (1) Bonds issued under section 7 of this act must state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal and interest, and must contain an unconditional promise to pay the principal and interest as it becomes due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

NEW SECTION. Sec. 11. The legislature may provide additional means for raising moneys for the payment of the principal and interest on the bonds authorized in section 7 of this act, and sections 9 and 10 of this act are not deemed to provide an exclusive method for their payment.

NEW SECTION. Sec. 12. The bonds authorized in section 7 of this act are a legal investment for all state funds or funds under state control and for all funds of any other public body.

Sec. 13. RCW 39.42.060 and 2002 c 240 s 7 are each amended to read as follows:

No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in RCW 39.42.070, for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

- (1) Obligations for the payment of current expenses of state government;
- (2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;
- (3) Principal of and interest on bond anticipation notes;
- (4) Any indebtedness which has been refunded;
- (5) Financing contracts entered into under chapter 39.94 RCW;
- (6) Indebtedness authorized or incurred before July 1, 1993, pursuant to statute which requires that the state treasury be reimbursed, in the amount of the

principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW;

(7) Indebtedness authorized and incurred after July 1, 1993, pursuant to statute that requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education;

(8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness;

(9) Indebtedness incurred for the purposes identified in RCW 43.99N.020;

(10) Indebtedness incurred for the purposes of the school district bond guaranty established by chapter 39.98 RCW;

(11) Indebtedness incurred for the purposes of replacing the waterproof membrane over the east plaza garage and revising related landscaping construction pursuant to RCW 43.99Q.070; ~~((and))~~

(12) Indebtedness incurred for the purposes of the state legislative building rehabilitation, to the extent that principal and interest payments of such indebtedness are paid from the capitol building construction account pursuant to RCW 43.99Q.140(2)(b); and

(13) Indebtedness incurred for the purposes of financing projects under section 7 of this act.

To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee.

Sec. 14. RCW 35.95A.120 and 2002 c 248 s 13 are each amended to read as follows:

The city transportation authority may be dissolved by a vote of the people residing within the boundaries of the authority if the authority is faced with significant financial problems. However, the authority may covenant with holders of its bonds that it may not be dissolved and shall continue to exist solely for the purpose of continuing to levy and collect any taxes or assessments levied by it and pledged to the repayment of debt and to take other actions, including the appointment of a trustee, as necessary to allow it to repay any remaining debt. No such debt may be incurred by the authority on a project until thirty days after a final environmental impact statement on that project has been issued as required by chapter 43.21C RCW. The amount of the authority's initial bond issue is limited to the amount of the project costs in the subsequent two years as documented by a certified engineer or by submitted bids, plus any reimbursable capital expenses already incurred at the time of the bond issue. The authority may size the first bond issue consistent with the internal revenue service five-year spend down schedule if an independent financial advisor recommends such an approach is financially advisable. Any referendum petition to dissolve the

city transportation authority must be filed with the city council and contain provisions for dissolution of the authority. Within seven days, the city prosecutor must review the validity of the petition and submit its report to the petitioner and city council. If the petitioner's claims are deemed valid by the city prosecutor, within ten days of the petitioner's filing, the city council will confer with the petitioner concerning the form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title must be posed as a question and an affirmative vote on the measure results in authority retention and a negative vote on the measure results in the authority's dissolution. The petitioner will be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner has ninety days in which to secure on petition forms, the signatures of not less than fifteen percent of the registered voters in the authority area and to file the signed petitions with the filing officer. Each petition form must contain the ballot title and the full text of the measure to be referred. The filing officer will verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the initiative to the authority area voters at a general or special election held on one of the dates provided in RCW 29.13.010 as determined by the city council, which election will not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

NEW SECTION. Sec. 15. Sections 1 through 12 of this act are each added to chapter 47.10 RCW.

NEW SECTION. Sec. 16. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the Senate April 26, 2003.

Passed by the House April 26, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.

CHAPTER 148

[Engrossed Substitute Senate Bill 6026]

TOURISM PROMOTION AREAS

AN ACT Relating to authorizing special assessments to fund convention and tourism promotion; reenacting and amending RCW 43.79A.040; and adding a new chapter to Title 35 RCW.

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

NEW SECTION. Sec. 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Area" means a tourism promotion area.

(2) "Legislative authority" means the legislative authority of any county with a population greater than forty thousand but less than one million, or of any city or town within such a county, including unclassified cities or towns operating under special charters.

(3) "Lodging business" means a person that furnishes lodging taxable by the state under chapter 82.08 RCW that has forty or more lodging units.

(4) "Tourism promotion" means activities and expenditures designed to increase tourism and convention business, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists, and operating tourism destination marketing organizations.

NEW SECTION. Sec. 2. For the purpose of establishing a tourism promotion area, an initiation petition must be presented to the legislative authority having jurisdiction of the area in which the proposed tourism promotion area is to be located. The initiation petition must include the following:

- (1) A description of the boundaries of the proposed area;
- (2) The proposed uses and projects to which the proposed revenue from the charge shall be put and the total estimated costs;
- (3) The estimated rate for the charge with a proposed breakdown by class of lodging business if such classification is to be used; and
- (4) The signatures of the persons who operate lodging businesses in the proposed area who would pay sixty percent or more of the proposed charges.

NEW SECTION. Sec. 3. A legislative authority shall, after receiving a valid initiation petition under section 2 of this act, adopt a resolution of intention to establish an area. The resolution must state:

- (1) The time and place of a hearing to be held by the legislative authority to consider the establishment of an area;
- (2) A description of boundaries in the proposed area;
- (3) The proposed area uses and projects to which the proposed revenues from the charge shall be dedicated and the total estimated cost of projects; and
- (4) The estimated rate or rates of the charge with a proposed breakdown of classifications as described in section 5 of this act.

NEW SECTION. Sec. 4. (1) Except as provided in subsection (2) of this section, no legislative authority may establish a tourism promotion area that includes within the boundaries of the area:

- (a) Any portion of an incorporated city or town, if the legislative authority is that of the county; and
- (b) Any portion of the county outside of an incorporated city or town, if the legislative authority is that of the city or town.

(2) By interlocal agreement adopted pursuant to chapter 39.34 RCW, a county, city, or town may establish a tourism promotion area that includes within the boundaries of the area portions of its own jurisdiction and another jurisdiction, if the other jurisdiction is party to the agreement.

NEW SECTION. Sec. 5. A legislative authority may impose a charge on the furnishing of lodging by a lodging business located in the area.

- (1) There shall not be more than six classifications upon which a charge can be imposed.
- (2) Classifications can be based upon the number of rooms, room revenue, or location within the area.
- (3) Each classification may have its own rate, which shall be expressed in terms of nights of stay.
- (4) In no case may the rate under this section be in excess of two dollars per night of stay.

NEW SECTION. Sec. 6. Notice of a hearing held under section 3 of this act shall be given by:

- (1) One publication of the resolution of intention in a newspaper of general circulation in the city or county in which the area is to be established; and
- (2) Mailing a complete copy of the resolution of intention to each lodging business in the proposed area.

Publication and mailing shall be completed at least ten days prior to the date and time of the hearing.

NEW SECTION. Sec. 7. Whenever a hearing is held under section 3 of this act, the legislative authority shall hear all protests and receive evidence for or against the proposed action. The legislative authority may continue the hearing from time to time. Proceedings shall terminate if protest is made by the lodging businesses in the area which would pay a majority of the proposed charges.

NEW SECTION. Sec. 8. Only after an initiation petition has been presented to the legislative authority under section 2 of this act and only after the legislative authority has conducted a hearing under section 3 of this act, may the legislative authority adopt an ordinance to establish an area. If the legislative authority adopts an ordinance to establish an area, the ordinance shall contain the following information:

- (1) The number, date, and title of the resolution of intention pursuant to which it was adopted;
- (2) The time and place the hearing was held concerning the formation of the area;
- (3) The description of the boundaries of the area;
- (4) The initial or additional rate of charges to be imposed with a breakdown by classification, if such classification is used;
- (5) A statement that an area has been established; and
- (6) The uses to which the charge revenue shall be put. Uses shall conform to the uses declared in the initiation petition under section 2 of this act.

NEW SECTION. Sec. 9. (1) The charge authorized by this chapter shall be administered by the department of revenue and shall be collected by lodging businesses from those persons who are taxable by the state under chapter 82.08 RCW. Chapter 82.32 RCW applies to the charge imposed under this chapter.

(2) At least seventy-five days prior to the effective date of the resolution or ordinance imposing the charge, the legislative authority shall contract for the administration and collection by the department of revenue.

(3) The charges authorized by this chapter that are collected by the department of revenue shall be deposited by the department in the local tourism promotion account created in section 10 of this act.

NEW SECTION. Sec. 10. The local tourism promotion account is created in the custody of the state treasurer. All receipts from the charges for tourism promotion must be deposited into this account. Expenditures from the account may only be used for tourism promotion. The state treasurer shall distribute the money in the account on a monthly basis to the legislative authority on whose behalf the money was collected.

NEW SECTION. Sec. 11. The charges imposed under this chapter are in addition to the special assessments that may be levied under chapter 35.87A RCW.

NEW SECTION. Sec. 12. The charges imposed under this chapter are not a tax on the "sale of lodging" for the purposes of RCW 82.14.410.

NEW SECTION. Sec. 13. (1) The legislative authority imposing the charge shall have sole discretion as to how the revenue derived from the charge is to be used to promote tourism. However, the legislative authority may appoint existing advisory boards or commissions to make recommendations as to its use, or the legislative authority may create a new advisory board or commission for the purpose.

(2) The legislative authority may contract with tourism destination marketing organizations or other similar organizations to administer the operation of the area, so long as the administration complies with all applicable provisions of law, including this chapter, and with all county, city, or town resolutions and ordinances, and with all regulations lawfully imposed by the state auditor or other state agencies.

NEW SECTION. Sec. 14. The legislative authority may disestablish an area by ordinance after a hearing before the legislative authority. The legislative authority shall adopt a resolution of intention to disestablish the area at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

Sec. 15. RCW 43.79A.040 and 2002 c 322 s 5, 2002 c 204 s 7, and 2002 c 61 s 6 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 promise scholarship account, the college savings program account, 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 state combined fund drive account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust

fund, the energy account, the fair fund, the fruit and vegetable inspection account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the local tourism promotion account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility 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 city and county advance right-of-way revolving fund, 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. 16.** Sections 1 through 14 of this act constitute a new chapter in Title 35 RCW.

Passed by the Senate April 27, 2003.

Passed by the House April 27, 2003.

Approved by the Governor May 8, 2003.

Filed in Office of Secretary of State May 8, 2003.

CHAPTER 149

[Senate Bill 5725]

SEMICONDUCTOR INDUSTRY—INCENTIVES

AN ACT Relating to providing tax incentives to support the semiconductor cluster in Washington state; amending RCW 82.04.240 and 82.04.280; adding new sections to chapter 82.04 RCW; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.12 RCW; adding a new section to chapter 84.36 RCW; adding a new section to chapter 82.32 RCW; creating new sections; providing a contingent effective date; and providing expiration dates.

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

NEW SECTION. **Sec. 1.** The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. The Washington competitiveness council has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. However, additional incentives for the semiconductor cluster need

to be put in place in recognition of the unique forces and global issues involved in business decisions that key businesses in this cluster face.

Therefore, the legislature intends to enact comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase.

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

(1) The tax imposed by RCW 82.04.240(2) does not apply to any person in respect to the manufacturing of semiconductor microchips.

(2) For the purposes of this section:

(a) "Manufacturing semiconductor microchips" means taking raw polished semiconductor wafers and embedding integrated circuits on the wafers using processes such as masking, etching, and diffusion; and

(b) "Integrated circuit" means a set of microminiaturized, electronic circuits.

(3) This section expires nine years after the effective date of this act.

Sec. 3. RCW 82.04.240 and 1998 c 312 s 3 are each amended to read as follows:

(1) Upon every person (~~(except persons taxable under RCW 82.04.260 (1), (2), (4), (5), or (6))~~) engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

(2) Upon every person engaging within this state in the business of manufacturing semiconductor materials, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or, in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.275 percent. For the purposes of this subsection "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, compound semiconductors, integrated circuits, and microchips. This subsection (2) expires twelve years after the effective date of this act.

(3) The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Sec. 4. RCW 82.04.280 and 1998 c 343 s 3 are each amended to read as follows:

Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals, or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or

vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire, except persons taxable as processors for hire under another section of this chapter; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.

NEW SECTION. Sec. 5. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the constructing of new buildings used for the manufacturing of semiconductor materials, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). 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.

(2) To be eligible under this section the manufacturer or processor for hire must meet the following requirements for an eight-year period, such period beginning the day the new building commences commercial production, or a portion of tax otherwise due shall be immediately due and payable pursuant to subsection (3) of this section:

(a) The manufacturer or processor for hire must maintain at least seventy-five percent of full employment at the new building for which the exemption under this section is claimed.

(b) Before commencing commercial production at a new facility the manufacturer or processor for hire must meet with the department to review projected employment levels in the new buildings. The department, using information provided by the taxpayer, shall make a determination of the number of positions that would be filled at full employment. This number shall be used throughout the eight-year period to determine whether any tax is to be repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(c) In those situations where a production building in existence on the effective date of this section will be phased out of operation during which time employment at the new building at the same site is increased, the manufacturer or processor for hire shall maintain seventy-five percent of full employment at the manufacturing site overall.

(d) No application is necessary for the tax exemption. The person is subject to all the requirements of chapter 82.32 RCW. A person taking the exemption under this section must report as required under section 11 of this act.

(3) If the employment requirement is not met for any one calendar year, one-eighth of the exempt sales and use taxes shall be due and payable by April 1st of the following year. The department shall assess interest to the date the tax was imposed, but not penalties, on the taxes for which the person is not eligible.

(4) The exemption applies to new buildings, or parts of buildings, that are used exclusively in the manufacturing of semiconductor materials, including the storage of raw materials and finished product.

(5) For the purposes of this section:

(a) "Commencement of commercial production" is deemed to have occurred when the equipment and process qualifications in the new building are completed and production for sale has begun; and

(b) "Full employment" is the number of positions required for full capacity production at the new building, for positions such as line workers, engineers, and technicians.

(c) "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(6) No exemption may be taken after twelve years after the effective date of this act, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(7) This section expires twelve years after the effective date of this act.

NEW SECTION. **Sec. 6.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings used for the manufacturing of semiconductor materials during the course of constructing such buildings or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in section 5 of this act apply to this section.

(3) No exemption may be taken twelve years after the effective date of this act, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(4) This section expires twelve years after the effective date of this act.

NEW SECTION. Sec. 7. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person taking the exemption under this section must report under section 11 of this act. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after the effective date of this act.

NEW SECTION. Sec. 8. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person taking the exemption under this section must report under section 11 of this act. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after the effective date of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under RCW 82.04.240(2) for persons engaged in the business of manufacturing semiconductor materials. For the purposes of this section "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2)(a) The credit under this section shall equal three thousand dollars for each employment position used in manufacturing production that takes place in a new building exempt from sales and use tax under sections 5 and 6 of this act. A credit is earned for the calendar year a person fills a position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to eight years. Those positions that are not filled for the entire year are eligible for fifty percent of the credit if filled less than six months, and the entire credit if filled more than six months.

(b) To qualify for the credit, the manufacturing activity of the person must be conducted at a new building that qualifies for the exemption from sales and use tax under sections 5 and 6 of this act.

(c) In those situations where a production building in existence on the effective date of this section will be phased out of operation, during which time employment at the new building at the same site is increased, the person is eligible for credit for employment at the existing building and new building, with the limitation that the combined eligible employment not exceed full employment at the new building. "Full employment" has the same meaning as in section 5 of this act. The credit may not be earned until the commencement of commercial production, as that term is used in section 5 of this act.

(3) No application is necessary for the tax credit. The person is subject to all of the requirements of chapter 82.32 RCW. 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.

(4) 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 retroactive to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(5) A person taking the credit under this section must report under section 11 of this act.

(6) Credits may be taken after twelve years after the effective date of this act, for those buildings at which commercial production began before twelve years after the effective date of this act, subject to all of the eligibility criteria and limitations of this section.

(7) This section expires twelve years after the effective date of this act.

NEW SECTION. Sec. 10. A new section is added to chapter 84.36 RCW to read as follows:

(1) Machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 used in manufacturing semiconductor materials at a building

exempt from sales and use tax and in compliance with the employment requirement under sections 5 and 6 of this act are tax exempt from taxation. "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person seeking this exemption must make application to the county assessor, on forms prescribed by the department.

(3) A person receiving an exemption under this section must report in the manner prescribed in section 11 of this act.

(4) This section is effective for taxes levied for collection one year after the effective date of this act and thereafter.

(5) This section expires December 31st of the year occurring twelve years after the effective date of this act, for taxes levied for collection in the following year.

NEW SECTION. Sec. 11. A new section is added to chapter 82.32 RCW to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.240(2) or who claims an exemption or credit under section 2 or 5 through 10 of this act, shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.240(2), or tax exemption or credit under section 2 or 5 through 10 of this act. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.240(2) is used, or tax exemption or credit under section 2 or 5 through 10 of this act is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection the department shall declare the amount of taxes exempted or credited for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1st of the year occurring five years after the effective date of this act, and November 1st of the year occurring eleven years after the effective date of this act, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of chapter . . . , Laws of 2003 (this act) in regard to keeping Washington competitive. The report shall measure the effect of chapter . . . , Laws of 2003 (this act) on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a

discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter . . . , Laws of 2003 (this act).

NEW SECTION. Sec. 12. (1)(a) This act is contingent upon the siting and commercial operation of a significant semiconductor microchip fabrication facility in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in section 5 of this act.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in section 2 of this act.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) This act takes effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, as determined by the director of the department of revenue.

(3)(a) The department of revenue shall provide notice of the effective date of this act to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and this act is effective, the department discovers that commencement of commercial production did not take place within three years of the date the contract was signed, the department shall make a determination that this act is no longer effective, and all taxes that would have been otherwise due shall be deemed deferred taxes and are immediately assessed and payable from any person reporting tax under RCW 82.04.240(2) or claiming an exemption or credit under section 2 or 5 through 10 of this act. The department is not authorized to make a second determination regarding the effective date of this act.

Passed by the Senate April 27, 2003.

Passed by the House April 27, 2003.

Approved by the Governor May 8, 2003.

Filed in Office of Secretary of State May 8, 2003.

CHAPTER 150

[Senate Bill 5363]

PUBLIC WORKS ASSISTANCE ACCOUNT

AN ACT Relating to funding for the community economic revitalization board; amending 2002 c 242 s 1 (uncodified); reenacting and amending RCW 43.84.092; adding a new section to chapter 43.84 RCW; and providing an effective date.

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

Sec. 1. 2002 c 242 s 1 (uncodified) is amended to read as follows:

The legislature finds that the community economic revitalization board plays a valuable and unique role in stimulating and diversifying local economies, attracting private investment, creating new jobs, and generating additional state and local tax revenues by investing in public facilities projects that result in new or expanded economic development. The legislature also finds that it is in the best interest of the state and local communities to secure a stable and dedicated

source of funds for the community economic revitalization board. It is the intent of the legislature to establish an ongoing funding source for the community economic revitalization board that will be used exclusively to advance economic development infrastructure. ~~((This act provides a temporary funding source until such time as a more permanent funding solution can be established.))~~ This act provides a partial funding solution by directing that beginning July 1, 2005, the interest earnings generated by the public works assistance account shall be used to fund the community economic revitalization board's financial assistance programs. These funds are not for use other than for the stated purpose and goals of the community economic revitalization board.

Sec. 2. RCW 43.84.092 and 2002 c 242 s 2, 2002 c 114 s 24, and 2002 c 56 s 402 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 drinking water assistance administrative account, the drinking water

assistance repayment 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 multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the regional transportation investment district 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 Tacoma Narrows toll bridge 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 fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, 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. 3. A new section is added to chapter 43.84 RCW to read as follows:

The proportionate share of earnings based on the average daily balance in the public works assistance account shall be placed in the public facilities construction loan revolving fund.

NEW SECTION. Sec. 4. Sections 2 and 3 of this act take effect July 1, 2005.

Passed by the Senate April 9, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 8, 2003.

Filed in Office of Secretary of State May 8, 2003.

CHAPTER 151

[Senate Bill 5662]

COMMUNITY ECONOMIC REVITALIZATION BOARD—MEMBERSHIP

AN ACT Relating to the community economic revitalization board; and amending RCW 43.160.030 and 43.160.035.

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

Sec. 1. RCW 43.160.030 and 1996 c 51 s 3 are each amended to read as follows:

(1) The community economic revitalization board is hereby created to exercise the powers granted under this chapter.

(2) The board shall consist of ~~((the chairman of and one minority member appointed by the speaker of the house of representatives from the committee of the house of representatives that deals with issues of economic development, the chairman of and one minority member appointed by the president of the senate from the committee of the senate that deals with issues of economic development, and))~~ one member from each of the two major caucuses of the house of representatives to be appointed by the speaker of the house and one member from each of the two major caucuses of the senate to be appointed by the president of the senate. The board shall also consist of the following members appointed by the governor: A recognized private or public sector economist; one port district official; one county official; one city official; one

representative of the public; one representative of small businesses each from: (a) The area west of Puget Sound, (b) the area east of Puget Sound and west of the Cascade range, (c) the area east of the Cascade range and west of the Columbia river, and (d) the area east of the Columbia river; one executive from large businesses each from the area west of the Cascades and the area east of the Cascades. The appointive members shall initially be appointed to terms as follows: Three members for one-year terms, three members for two-year terms, and three members for three-year terms which shall include the chair. Thereafter each succeeding term shall be for three years. The chair of the board shall be selected by the governor. The members of the board shall elect one of their members to serve as vice-chair. The director of community, trade, and economic development, the director of revenue, the commissioner of employment security, and the secretary of transportation shall serve as nonvoting advisory members of the board.

(3) Management services, including fiscal and contract services, shall be provided by the department to assist the board in implementing this chapter and the allocation of private activity bonds.

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

(5) If a vacancy occurs by death, resignation, or otherwise of appointive members of the board, the governor shall fill the same for the unexpired term. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(6) A member appointed by the governor may not be absent from more than fifty percent of the regularly scheduled meetings in any one calendar year. Any member who exceeds this absence limitation is deemed to have withdrawn from the office and may be replaced by the governor.

Sec. 2. RCW 43.160.035 and 1993 c 320 s 3 are each amended to read as follows:

Each member of the house of representatives who is appointed to the community economic revitalization board under RCW 43.160.030 may designate another member ~~((of))~~ from the ~~((trade, economic development, and housing committee of the))~~ house of representatives to take his or her place on the board for meetings at which the member will be absent, as long as the designated member belongs to the same caucus. The designee shall have all powers to vote and participate in board deliberations as have the other board members. Each member of the senate who is appointed to the community economic revitalization board under RCW 43.160.030 may designate another member ~~((of))~~ from the ~~((trade, technology, and economic development committee of the))~~ senate to take his or her place on the board for meetings at which the member will be absent, as long as the designated member belongs to the same caucus. The designee shall have all powers to vote and participate in board deliberations as have the other board members. Each agency head of an executive agency who is appointed to serve as a nonvoting advisory member of the community economic revitalization board under RCW 43.160.030 may designate an agency employee to take his or her place on the board for meetings at which the agency head will be absent. The designee will have all powers to participate in board deliberations as have the other board members but shall not have voting powers.

Passed by the Senate April 17, 2003.
Passed by the House April 14, 2003.
Approved by the Governor May 8, 2003.
Filed in Office of Secretary of State May 8, 2003.

CHAPTER 152

[Substitute Senate Bill 5786]
RURAL DEVELOPMENT

AN ACT Relating to rural development; and reenacting and amending RCW 36.70A.070.

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

Sec. 1. RCW 36.70A.070 and 2002 c 212 s 2 and 2002 c 154 s 2 are each reenacted and amended to read as follows:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such

capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of

(d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdiction boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, work force, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c)

an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

Passed by the Senate March 12, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 8, 2003.

Filed in Office of Secretary of State May 8, 2003.

CHAPTER 153

[Second Substitute House Bill 1973]

TOURISM PROMOTION—NATURE-BASED

AN ACT Relating to promoting tourism; amending RCW 43.330.090, 43.330.094, and 42.52.150; adding a new section to chapter 77.12 RCW; adding a new section to chapter 42.52 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that tourism is a growing sector of the Washington economy. Washington has a diverse geography, geology, climate, and natural resources, and offers abundant opportunities for wildlife viewing. Nature-based tourism is the fastest growing outdoor activity and segment of the travel industry and the state can take advantage of this by marketing Washington's natural assets to international as well as national tourist markets. Expanding tourism efforts can provide Washington residents with jobs and local communities with needed revenues.

The legislature also finds that current efforts to promote Washington's natural resources and nature-based tourism to national and international markets are too diffuse and limited by funding and that a collaborative effort among state and local governments, tribes, and private enterprises can serve to leverage the investments in nature-based tourism made by each.

Sec. 2. RCW 43.330.090 and 1998 c 245 s 85 are each amended to read as follows:

(1) The department shall work with private sector organizations, local governments, local ~~((economie))~~ associate development organizations, and higher education and training institutions to assist in the development of strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production by focusing on targeted sectors. The targeted sectors may include, but are not limited to, software, forest products, biotechnology, environmental industries, recycling markets and waste reduction, aerospace, food processing, tourism, film and video, microelectronics, new materials, robotics, and machine tools. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to a targeted sector's approach to economic development and including additional sectors in its efforts. The department shall use information gathered

in each service delivery region in formulating its sectoral strategies and in designating new targeted sectors.

(2) The department shall ~~((ensure that the state continues to))~~ pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private tourism development organizations. ~~((The department shall work to provide a balance of tourism activities throughout the state and during different seasons of the year. In addition,))~~ The department, in operating its tourism program, shall:

(a) Promote Washington as a tourism destination to national and international markets to include nature-based and wildlife viewing tourism;

(b) Provide information to businesses and local communities on tourism opportunities that could expand local revenues;

(c) Assist local communities to strengthen their tourism partnerships, including their relationships with state and local agencies;

(d) Provide leadership training and assistance to local communities to facilitate the development and implementation of local tourism plans;

(e) Coordinate the development of a statewide tourism and marketing plan. The department's tourism planning efforts shall be carried out in conjunction with public and private tourism development organizations including the department of fish and wildlife and other appropriate agencies. The plan shall specifically address mechanisms for: (i) Funding national and international marketing and nature-based tourism efforts; (ii) interagency cooperation; and (iii) integrating the state plan with local tourism plans.

(3) The department may, in carrying out its efforts to expand the tourism industry in the state:

(a) Solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local or other governmental entities, as well as private sources, and may expend the same or any income therefrom for tourism purposes. All revenue received for tourism purposes shall be deposited into the tourism development and promotion account created in RCW 43.330.094;

(b) Host conferences and strategic planning workshops relating to the promotion of nature-based and wildlife viewing tourism;

(c) Conduct or contract for tourism-related studies;

(d) Contract with individuals, businesses, or public entities to carry out its tourism-related activities under this section;

(e) Provide tourism-related organizations with marketing and other technical assistance;

(f) Evaluate and make recommendations on proposed tourism-related policies.

(4) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

~~((3))~~ (5) In assisting in the development of a targeted sector, the department's activities may include, but are not limited to:

(a) Conducting focus group discussions, facilitating meetings, and conducting studies to identify members of the sector, appraise the current state of the sector, and identify issues of common concern within the sector;

(b) Supporting the formation of industry associations, publications of association directories, and related efforts to create or expand the activities or industry associations;

(c) Assisting in the formation of flexible networks by providing (i) agency employees or private sector consultants trained to act as flexible network brokers and (ii) funding for potential flexible network participants for the purpose of organizing or implementing a flexible network;

(d) Helping establish research consortia;

(e) Facilitating joint training and education programs;

(f) Promoting cooperative market development activities;

(g) Analyzing the need, feasibility, and cost of establishing product certification and testing facilities and services; and

(h) Providing for methods of electronic communication and information dissemination among firms and groups of firms to facilitate network activity.

NEW SECTION. Sec. 3. A new section is added to chapter 77.12 RCW to read as follows:

The department shall manage wildlife programs in a manner that provides for public opportunities to view wildlife and supports nature-based and wildlife viewing tourism without impairing the state's wildlife resources.

Sec. 4. RCW 43.330.094 and 1997 c 220 s 223 are each amended to read as follows:

The tourism development and promotion account is created in the state treasury. All receipts from RCW 36.102.060(10) and 43.330.090(3)(a) must be deposited into the account. Moneys in the account received under RCW 36.102.060(10) may be spent only after appropriation. No appropriation is required for expenditures from moneys received under RCW 43.330.090(3)(a). Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of ~~((promotion of))~~ expanding and promoting the tourism industry in the state of Washington.

NEW SECTION. Sec. 5. A new section is added to chapter 42.52 RCW to read as follows:

When soliciting charitable gifts, grants, or donations solely for the purposes of promoting the expansion of tourism as provided for in RCW 43.330.090, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

Sec. 6. RCW 42.52.150 and 1998 c 7 s 2 are each amended to read as follows:

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has

been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

(a) Unsolicited flowers, plants, and floral arrangements;

(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism as provided for in RCW 43.330.090;

(h) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

~~((h))~~ (i) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17 RCW.

Passed by the House April 22, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 8, 2003.

Filed in Office of Secretary of State May 8, 2003.

CHAPTER 154

[Substitute House Bill 2118]

MICROBREW BEER—FARMERS MARKETS

AN ACT Relating to the marketing of microbrew beer at farmers markets; amending RCW 66.24.240 and 66.24.244; and adding a new section to chapter 66.28 RCW.

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

Sec. 1. RCW 66.24.240 and 2000 c 142 s 2 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.

(4)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (4)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

Sec. 2. RCW 66.24.244 and 1998 c 126 s 3 are each amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor per year.

(2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer of its own production. Any microbrewery 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) The board may issue an endorsement to this license allowing for on-premises consumption of beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4) The microbrewer obtaining such endorsement must determine, at the time the endorsement is issued, whether the licensed premises will be operated either as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.

(5)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (5) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (5) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other

designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (5):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

NEW SECTION. Sec. 3. A new section is added to chapter 66.28 RCW to read as follows:

Licensed beer distributors may not buy or sell beer, for purposes of distribution, at farmers market locations authorized by the board pursuant to this act.

Passed by the House April 22, 2003.

Passed by the Senate April 8, 2003.

Approved by the Governor May 8, 2003.

Filed in Office of Secretary of State May 8, 2003.

CHAPTER 155

[House Bill 1519]

RETIREMENT—DEATH BENEFITS

AN ACT Relating to death benefits for members of the teachers' retirement system, school employees' retirement system, and public employees' retirement system; amending RCW 41.32.520, 41.32.805, 41.32.895, 41.35.460, 41.35.710, 41.40.270, 41.40.700, and 41.40.835; and creating a new section.

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

Sec. 1. RCW 41.32.520 and 1997 c 73 s 1 are each amended to read as follows:

(1) Except as specified in subsection (3) of this section, upon receipt of proper proofs of death of any member before retirement or before the first installment of his or her retirement allowance shall become due his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits payable upon his or her death shall be paid to his or her estate or to such persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If a member fails to file a new beneficiary designation subsequent to marriage, divorce, or reestablishment of membership following termination by withdrawal, lapsation, or retirement, payment of his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits upon death before retirement shall be made to the surviving spouse, if any; otherwise, to his or her estate. If a member had established ten or more years of Washington membership service credit or was eligible for retirement, the beneficiary or the surviving spouse if otherwise eligible may elect, in lieu of a cash refund of the member's accumulated contributions, the following survivor benefit plan actuarially reduced, except under subsection (4) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670:

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

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

(i) In the case of a dependent child the allowance shall continue until attainment of majority or so long as the department judges that the circumstances which created his or her dependent status continue to exist. In any case, if at the time dependent status ceases, an amount equal to the amount of accumulated contributions of the deceased member has not been paid to the beneficiary, the remainder shall then be paid in a lump sum to the beneficiary.

(ii) If at the time of death, the member was not then qualified for a service retirement allowance, the benefit shall be based upon the actuarial equivalent of

the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

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

(3) If a member dies within sixty days following application for disability retirement under RCW 41.32.550, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.32.550, according to the option chosen under RCW 41.32.530 in the disability application.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.32.480.

Sec. 2. RCW 41.32.805 and 2000 c 247 s 1002 are each amended to read as follows:

(1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of such member's death shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.32.765, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.32.785 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.765; if a surviving spouse who is receiving a retirement allowance dies

leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.32.765. The member's retirement allowance is computed under RCW 41.32.760.

Sec. 3. RCW 41.32.895 and 2000 c 247 s 1003 are each amended to read as follows:

(1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.32.851 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.875.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.32.875. The member's retirement allowance is computed under RCW 41.32.840.

Sec. 4. RCW 41.35.460 and 1998 c 341 s 107 are each amended to read as follows:

(1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.35.420, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.35.220 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.420; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike, calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.35.420. The member's retirement allowance is computed under RCW 41.35.400.

Sec. 5. RCW 41.35.710 and 1998 c 341 s 212 are each amended to read as follows:

(1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.35.620 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.680.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.35.680. The member's retirement allowance is computed under RCW 41.35.620.

Sec. 6. RCW 41.40.270 and 1997 c 73 s 2 are each amended to read as follows:

(1) Except as specified in subsection (4) of this section, should a member die before the date of retirement the amount of the accumulated contributions standing to the member's credit in the employees' savings fund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of death:

(a) Shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there be no such designated person or persons still living at the time of the member's death, or if a member fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, such accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the surviving spouse as if in fact such spouse had been nominated by written designation as aforesaid, or if there be no such surviving spouse, then to the member's legal representatives.

(2) Upon the death in service, or while on authorized leave of absence for a period not to exceed one hundred and twenty days from the date of payroll separation, of any member who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death, the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 41.40.188, calculated under the retirement allowance described in RCW 41.40.185 or 41.40.190, whichever is greater, actuarially reduced, except under subsection (5) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 shall automatically be given effect as if selected for the benefit of the designated beneficiary. If the member is not then qualified for a service retirement allowance, such benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(3) Subsection (1) of this section, unless elected, shall not apply to any member who has applied for service retirement in RCW 41.40.180, as now or hereafter amended, and thereafter dies between the date of separation from service and the member's effective retirement date, where the member has selected a survivorship option under RCW 41.40.188. In those cases the beneficiary named in the member's final application for service retirement may elect to receive either a cash refund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, or monthly payments according to the option selected by the member.

(4) If a member dies within sixty days following application for disability retirement under RCW 41.40.230, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.40.235, according to the option chosen under RCW 41.40.188 in the disability application.

(5) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.40.185.

Sec. 7. RCW 41.40.700 and 2000 c 247 s 1004 are each amended to read as follows:

(1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in

the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.40.630, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.40.660 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.630; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.40.630. The member's retirement allowance is computed under RCW 41.40.620.

Sec. 8. RCW 41.40.835 and 2000 c 247 s 312 are each amended to read as follows:

(1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.40.790 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member

was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.820.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.40.820. The member's retirement allowance is computed under RCW 41.40.790.

NEW SECTION. Sec. 9. This act applies to any member killed in the course of employment, as determined by the director of the department of labor and industries, on or after July 1, 2001.

Passed by the House March 12, 2003.
Passed by the Senate April 11, 2003.
Approved by the Governor May 9, 2003.
Filed in Office of Secretary of State May 9, 2003.

CHAPTER 156

[House Bill 1206]

RETIREMENT—CONTRIBUTION RATES

AN ACT Relating to public employees', teachers', and school employees' retirement systems plan 3 member contribution rates; and amending RCW 41.34.040.

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

Sec. 1. RCW 41.34.040 and 2000 c 247 s 403 are each amended to read as follows:

(1) A member shall contribute from his or her compensation according to one of the following rate structures in addition to the mandatory minimum five percent:

<u>Option A</u>	<u>Contribution Rate</u>
All Ages	((5.0%)) <u>0.0%</u> fixed
<u>Option B</u>	
Up to Age 35	((5.0%)) <u>0.0%</u>
Age 35 to 44	((6.0%)) <u>1.0%</u>
Age 45 and above	((7.5%)) <u>2.5%</u>
<u>Option C</u>	
Up to Age 35	((6.0%)) <u>1.0%</u>
Age 35 to 44	((7.5%)) <u>2.5%</u>
Age 45 and above	((8.5%)) <u>3.5%</u>
<u>Option D</u>	

<u>All Ages</u>	<u>2.0%</u>
<u>Option E</u>	
<u>All Ages</u>	<u>5.0%</u>
<u>Option F</u>	
<u>All Ages</u>	<u>10.0%</u>

(2) The board shall have the right to offer contribution rate options in addition to those listed in subsection (1) of this section, provided that no significant additional administrative costs are created. All options offered by the board shall conform to the requirements stated in subsections (3) and ~~((4))~~ (5) of this section.

(3)(a) For members of the teachers' retirement system entering plan 3 under RCW 41.32.835 or members of the school employees' retirement system entering plan 3 under RCW 41.35.610, within ninety days of becoming a member he or she has an ~~((irrevocable))~~ option to choose one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A. ~~((Such assignment shall be irrevocable.))~~

(b) For members of the public employees' retirement system entering plan 3 under RCW 41.40.785, within the ninety days described in RCW 41.40.785 an employee who irrevocably chooses plan 3 shall select one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A. ~~((Such assignment shall be irrevocable.))~~

(c) For members of the teachers' retirement system transferring to plan 3 under RCW 41.32.817, members of the school employees' retirement system transferring to plan 3 under RCW 41.35.510, or members of the public employees' retirement system transferring to plan 3 under RCW 41.40.795, upon election to plan 3 he or she must ~~((irrevocably))~~ choose one of the above contribution rate structures.

(d) Within ninety days of the date that an employee changes employers, he or she has an ~~((irrevocable))~~ option to choose one of the above contribution rate structures. If the member does not select an option within this ninety-day period, he or she shall be assigned option A. ~~((Such assignment shall be irrevocable.))~~

(4) Each year, members may change their contribution rate option by notifying their employer in writing during the month of January.

(5) Contributions shall begin the first day of the pay cycle in which the rate option is made, or the first day of the pay cycle in which the end of the ninety-day period occurs.

Passed by the House February 12, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER I57

[Senate Bill 5094]

RETIREMENT—SCHOOLS—SUBSTITUTE EMPLOYEES

AN ACT Relating to providing optional service credit for substitute service to members of the school employees' retirement system; amending RCW 41.35.010 and 41.35.030; and adding a new section to chapter 41.35 RCW.

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

Sec. 1. RCW 41.35.010 and 2001 c 180 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise((:)).

(1) "Retirement system" means the Washington school employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4) "Employer," for plan 2 and plan 3 members, means a school district or an educational service district.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.35.030.

(6)(a) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under this (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(7) "Service" for plan 2 and plan 3 members means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.35.180. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(c) For purposes of plan 2 and 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(i) Less than eleven days equals one-quarter service credit month;

(ii) Eleven or more days but less than twenty-two days equals one-half service credit month;

(iii) Twenty-two days equals one service credit month;

(iv) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month; and

(v) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(8) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(9) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(10) "Membership service" means all service rendered as a member.

(11) "Beneficiary" for plan 2 and plan 3 members means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12) "Regular interest" means such rate as the director may determine.

(13) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(14) "Average final compensation" for plan 2 and plan 3 members means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(15) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(16) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(17) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(18) "Retirement allowance" for plan 2 and plan 3 members means monthly payments to a retiree or beneficiary as provided in this chapter.

(19) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(20) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(21) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(22) "Eligible position" means any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(23) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(24) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(25) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(26) "Director" means the director of the department.

(27) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(28) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(29) "Plan 2" means the Washington school employees' retirement system plan 2 providing the benefits and funding provisions covering persons who first

became members of the public employees' retirement system on and after October 1, 1977, and transferred to the Washington school employees' retirement system under RCW 41.40.750.

(30) "Plan 3" means the Washington school employees' retirement system plan 3 providing the benefits and funding provisions covering persons who first became members of the system on and after September 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

(31) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(32) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(33) "Index B" means the index for the year prior to index A.

(34) "Adjustment ratio" means the value of index A divided by index B.

(35) "Separation from service" occurs when a person has terminated all employment with an employer.

(36) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(37) "Classified employee" means an employee of a school district or an educational service district who is not eligible for membership in the teachers' retirement system established under chapter 41.32 RCW.

(38) "Substitute employee" means a classified employee who is employed by an employer exclusively as a substitute for an absent employee.

Sec. 2. RCW 41.35.030 and 1998 c 341 s 4 are each amended to read as follows:

Membership in the retirement system shall consist of all regularly compensated classified employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the

employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

(3) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(6) Substitute employees, except for the purposes of the purchase of service credit under section 3 of this act. Upon the return or termination of the absent employee a substitute employee is replacing, that substitute employee shall no longer be ineligible under this subsection;

(7) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

~~((7))~~ (8) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

~~((8))~~ (9) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application.

NEW SECTION. Sec. 3. A new section is added to chapter 41.35 RCW under the subchapter heading "provisions applicable to plan 2 and plan 3" to read as follows:

(1) A substitute employee who works five or more months of seventy or more hours for which earnable compensation is paid in a school year may apply

to the department to establish membership after the end of the school year during which the work was performed. The application must:

- (a) Include a list of the employers the substitute employee has worked for;
- (b) Include proof of hours worked and compensation earned; and
- (c) Be made prior to retirement.

(2) Substitute employees who are members may apply to the department to receive service after the end of the last day of instruction of the school year during which the service was performed. The application must:

- (a) Include a list of the employers the substitute employee has worked for;
- (b) Include proof of hours worked and compensation earned; and
- (c) Be made prior to retirement.

(3) If the department accepts the substitute employee's application for service credit, the substitute employee may obtain service credit by paying the required contribution to the retirement system. The employer must pay the required employer contribution upon notice from the department that the substitute employee has made contributions under this section.

(4) The department shall charge interest prospectively on employee contributions that are submitted under this section more than six months after the end of the school year, as defined in RCW 28A.150.040, for which the substitute employee is seeking service credit. The interest rate charged to the employee shall take into account interest lost on employer contributions delayed for more than six months after the end of the school year.

(5) Each employer shall quarterly notify each substitute employee it has employed during the school year of the number of hours worked by, and the compensation paid to, the substitute employee.

(6) If a substitute employee, as defined in RCW 41.35.010(38), applies to the department under this section for credit for earnable compensation earned from an employer, the substitute employee must make contributions for all periods of service for that employer.

(7) The department shall adopt rules implementing this section.

Passed by the Senate February 26, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 158

[Substitute Senate Bill 5236]

SCHOOL DISTRICT EMPLOYEES—BENEFIT PLANS

AN ACT Relating to offering health care benefit plans to school district employees; amending RCW 41.05.065; and reenacting and amending RCW 41.05.050.

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

Sec. 1. RCW 41.05.050 and 2002 c 319 s 4 and 2002 c 142 s 2 are each reenacted and amended to read as follows:

(1) Every department, division, or separate agency of state government, and such county, municipal, school district, educational service district, or other political subdivisions as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the

content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, or other political subdivision for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups, except as provided in subsection (4) of this section.

(2) If the authority at any time determines that the participation of a county, municipal, or other political subdivision covered under this chapter adversely impacts insurance rates for state employees, the authority shall implement limitations on the participation of additional county, municipal, or other political subdivisions.

(3) The contributions of any department, division, or separate agency of the state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(4)(a) Beginning September 1, ~~((2002))~~ 2003, the authority shall collect from each participating school district((s)) and educational service district((s shall be charged the same)) an amount equal to the composite rate ((as)) charged to state agencies, plus ((the same amounts for)) an amount equal to the employee premiums by plan and family size as ((are)) would be charged to state employees, for groups of district employees enrolled in authority plans as of January 1, ((2002)) 2003.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, ~~((2002))~~ 2003, the authority shall ~~((charge districts the same))~~ collect from each participating school district an amount equal to the composite rate charged to state agencies, plus ((the same amounts for)) an amount equal to the employee premiums by plan and by family size as ((are)) would be charged to state employees, only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on behalf of districts and their employees.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) The authority may charge districts a one-time set-up fee for employee groups enrolling in authority plans for the first time.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(f) Notwithstanding this subsection and RCW 41.05.065(3), the authority may allow districts enrolled on a tiered rate structure prior to September 1, 2002, to continue participation based on the same rate structure and under the same conditions and eligibility criteria.

(5) The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature.

Sec. 2. RCW 41.05.065 and 2002 c 142 s 3 are each amended to read as follows:

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits.

(3) The board shall design benefits and determine the terms and conditions of employee participation and coverage, including establishment of eligibility criteria. The same terms and conditions of participation and coverage, including eligibility criteria, shall apply to state employees and to school district employees and educational service district employees.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems. The board shall require participating school district and educational service district employees to pay at least the same employee premiums by plan and family size as state employees pay.

(5) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(6) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(7) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments and employees of political subdivisions not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance

through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(h) By December 1998, the health care authority, in consultation with the public employees' benefits board, shall submit a report to the appropriate committees of the legislature, including an analysis of the marketing and distribution of the long-term care insurance provided under this section.

Passed by the Senate February 18, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 159

[Senate Bill 5134]

HIGHER EDUCATION—BORDER COUNTIES

AN ACT Relating to border county higher education opportunities; amending RCW 28B.80.805, 28B.80.806, 28B.80.807, and 28B.15.0139; repealing 2002 c 130 s 7 (uncodified); repealing 2002 c 130 s 6 and 1999 c 320 s 6 (uncodified); and repealing 2002 c 130 s 5 and 2000 c 160 s 4 (uncodified).

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

Sec. 1. RCW 28B.80.805 and 2002 c 130 s 1 are each amended to read as follows:

(1) The legislature finds that certain tuition policies in Oregon state are more responsive to the needs of students living in economic regions that cross the state border than the Washington state policies. Under Oregon policy, students who are Washington residents may enroll at Portland State University for eight credits or less and pay the same tuition as Oregon residents. Further, the state of Oregon passed legislation in 1997 to begin providing to its community colleges the same level of state funding for students residing in bordering states as students residing in Oregon.

(2) The legislature intends to build on the recent Oregon initiatives regarding tuition policy for students in bordering states and to facilitate regional planning for higher education delivery by creating a ~~((pilot))~~ project on resident tuition rates in Washington counties that border Oregon state.

Sec. 2. RCW 28B.80.806 and 2002 c 130 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 Washington institutions of higher education that are located in counties on the Oregon border to implement tuition policies that correspond to Oregon policies. Under the border county (~~((pilot))~~) project, Columbia Basin Community College, Clark College, Lower Columbia Community College, Grays Harbor Community College, and Walla Walla Community College may enroll students who reside in the bordering Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Washington at resident tuition rates. The Tri-Cities and Vancouver branches of Washington State University may enroll students who reside in the bordering Oregon counties of Columbia, Multnomah, Clatsop, Clackamas, Morrow, Umatilla, Union, Wallowa, 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.

Sec. 3. RCW 28B.80.807 and 2002 c 130 s 4 are each amended to read as follows:

~~((+))~~ The higher education coordinating board shall administer Washington's participation in the border county higher education opportunity (~~((pilot))~~) project.

~~((2)) By December 1, 2003, the board shall report to the governor and appropriate committees of the legislature on the results of the pilot project. For each participating Washington institution of higher education, the report shall analyze, by program, the impact of the pilot project on: Enrollment levels, distribution of students by residency, and enrollment capacity. The report shall also include a recommendation on the extent to which border county tuition policies should be revised or expanded.))~~

Sec. 4. RCW 28B.15.0139 and 2002 c 130 s 3 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, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, 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, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least (~~(one year))~~ ninety days immediately before enrollment at a community college located in Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or Walla Walla county, Washington; or

(2) The student is enrolled in courses located at the Tri-Cities or Vancouver branch of Washington State University for eight credits or less.

NEW SECTION. **Sec. 5.** The following acts or parts of acts are each repealed:

(1) 2002 c 130 s 7 (uncodified);

(2) 2002 c 130 s 6 & 1999 c 320 s 6 (uncodified); and

(3) 2002 c 130 s 5 & 2000 c 160 s 4 (uncodified).

Passed by the Senate February 14, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 160

[Substitute Senate Bill 5189]

HIGHER EDUCATION—TUITION—KOREAN CONFLICT VETERANS

AN ACT Relating to tuition and fees charged at institutions of higher education to military and naval veterans of the Korean conflict; amending RCW 28B.15.558; 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 military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedom that define and distinguish our nation. It is the intent of the legislature to honor veterans of the Korean conflict for the public service they have provided to their country.

Sec. 2. RCW 28B.15.558 and 1997 c 211 s 1 are each amended to read as follows:

(1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may waive all or a portion of the tuition and services and activities fees for state employees as defined under subsection (2) of this section, veterans of the Korean conflict, and members of the Washington national guard. The enrollment of these persons is pursuant to the following conditions:

(a) Such persons shall register for and be enrolled in courses on a space available basis and no new course sections shall be created as a result of the registration;

(b) Enrollment information on persons registered pursuant to this section shall be maintained separately from other enrollment information and shall not be included in official enrollment reports, nor shall such persons be considered in any enrollment statistics that would affect budgetary determinations; and

(c) Persons registering on a space available basis shall be charged a registration fee of not less than five dollars.

(2) For the purposes of this section, "state employees" means persons employed half-time or more in one or more of the following employee classifications:

(a) Permanent employees in classified service under chapter 41.06 RCW;

(b) Permanent employees governed by chapter 41.56 RCW pursuant to the exercise of the option under RCW 41.56.201;

(c) Permanent classified employees and exempt paraprofessional employees of technical colleges; and

(d) Faculty, counselors, librarians, and exempt professional and administrative employees at institutions of higher education as defined in RCW 28B.10.016.

(3) For the purposes of this section, "veterans of the Korean conflict" means persons who served on active duty in the armed forces of the United States

during any portion of the period beginning June 27, 1950, and ending January 31, 1955.

(4) In awarding waivers, an institution of higher education may award waivers to eligible persons employed by the institution before considering waivers for eligible persons who are not employed by the institution.

((4)) (5) If an institution of higher education exercises the authority granted under this section, it shall include all eligible state employees, veterans of the Korean conflict, and members of the Washington national guard in the pool of persons eligible to participate in the program.

((5)) (6) In establishing eligibility to receive waivers, institutions of higher education may not discriminate between full-time employees and employees who are employed half-time or more.

Passed by the Senate March 16, 2003.
Passed by the House April 17, 2003.
Approved by the Governor May 9, 2003.
Filed in Office of Secretary of State May 9, 2003.

CHAPTER 161

[Senate Bill 5049]

VETERANS' HISTORY AWARENESS MONTH

AN ACT Relating to veterans' history awareness month; and adding a new section to chapter 73.04 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 73.04 RCW to read as follows:

The legislature declares that:

- (1) November of each year will be known as veterans' history awareness month;
- (2) The week in November in which veterans' day occurs is designated as a time for people of this state to celebrate the contributions to the state by veterans; and
- (3) Educational institutions, public entities, and private organizations are encouraged to designate time for appropriate activities in commemoration of the contributions of America's veterans.

Passed by the Senate March 11, 2003.
Passed by the House April 10, 2003.
Approved by the Governor May 9, 2003.
Filed in Office of Secretary of State May 9, 2003.

CHAPTER 162

[Substitute Senate Bill 5218]

ELECTIONS—ABSENTEE BALLOTS

AN ACT Relating to the timely mailing of absentee and mail ballots; amending RCW 29.36.270, 29.38.010, and 29.38.020; and creating a new section.

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

NEW SECTION. **Sec. 1.** It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter.

Sec. 2. RCW 29.36.270 and 1987 c 54 s 1 are each amended to read as follows:

(1) Except where a recount or litigation under RCW 29.04.030 is pending, the county auditor shall have sufficient absentee ballots ((ready to mail to)) available for absentee voters of that county at least twenty days before any primary, general election, or special election. The county auditor must mail absentee ballots to each voter for whom the county auditor has received a request nineteen days before the primary or election at least eighteen days before the primary or election. For a request for an absentee ballot received after the nineteenth day before the primary or election, the county auditor shall make every effort to mail ballots within one business day, and shall mail the ballots within two business days.

(2) The county auditor shall make every effort to mail ballots to overseas and service voters earlier than eighteen days before a primary or election.

(3) Each county auditor shall certify to the office of the secretary of state the dates the ballots prescribed in subsection (1) of this section were available and mailed.

(4) If absentee ballots will not be available or mailed as prescribed in subsection (1) of this section, the county auditor shall immediately certify to the office of the secretary of state when absentee ballots will be available and mailed. Copies of this certification must be provided to the county canvassing board, the press, jurisdictions with issues on the ballot in the election, and any candidates.

(5) If absentee ballots were not available or mailed as prescribed in subsection (1) of this section, for a reason other than a recount or litigation, the county auditor, in consultation with the certification and training program of the office of the secretary of state, shall submit a report to the office of the secretary of state outlining why the deadline was missed and what corrective actions will be taken in future elections to ensure that absentee ballots are available and mailed as prescribed in subsection (1) of this section.

(6) Failure to have absentee ballots available and mailed as prescribed in subsection (1) of this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election.

Sec. 3. RCW 29.38.010 and 2001 c 241 s 15 are each amended to read as follows:

The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29.07.160 as a mail ballot precinct. The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting in his or her precinct will be by mail ballot only. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29.36.240 shall not be counted.

Nothing in this section may be construed as altering the vote tallying requirements of RCW 29.62.090.

~~((As soon as ballots are available, the county auditor shall mail or deliver a ballot and an envelope, preaddressed to the issuing officer, to each active registered voter.))~~ The auditor shall mail each active voter a ballot at least eighteen days before a primary, general election, or special election. The auditor shall send each inactive voter either a ballot or an application to receive a ballot at least eighteen days before a primary, general election, or special election. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29.36.270 apply to mail ballot precincts.

If the precinct exceeds two hundred registered voters, or the auditor determines to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used.

Sec. 4. RCW 29.38.020 and 2001 c 241 s 16 are each amended to read as follows:

At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29.13.010 or 29.13.020 may also request that the special election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than ~~((twenty))~~ eighteen days before the date of such election, ~~((make available))~~ mail to each registered voter a mail ballot. The auditor shall handle inactive voters in the same manner as inactive voters in mail ballot precincts. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29.36.270 apply to mail ballot elections.

Passed by the Senate April 21, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 163

[Substitute Senate Bill 5274]

ARCHIVES DIVISION—FUNDING

AN ACT Relating to funding of the archives division; amending RCW 40.14.025, 40.14.027, and 36.22.175; and adding new sections to chapter 40.14 RCW.

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

Sec. 1. RCW 40.14.025 and 1996 c 245 s 3 are each amended to read as follows:

(1) The secretary of state and the director of financial management shall jointly establish a procedure and formula for allocating the costs of services provided by the division of archives and records management to state agencies. The total amount allotted for services to state agencies shall not exceed the appropriation to the archives and records management account during any allotment period.

~~((2))~~ (2) There is created the archives and records management account in the state treasury which shall consist of all fees and charges collected under this section ~~((, RCW 36.22.175, and 40.14.027))~~. The account shall be appropriated exclusively for the payment of costs and expenses incurred in the operation of the division of archives and records management as specified by law.

NEW SECTION. Sec. 2. A new section is added to chapter 40.14 RCW to read as follows:

The imaging account is created in the custody of the state treasurer. All receipts collected under RCW 40.14.020(8) for contract imaging, micrographics, reproduction, and duplication services provided by the division of archives and records management must be deposited into the account, and expenditures from the account may be used only for these purposes. Only the secretary of state or the secretary'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.

NEW SECTION. Sec. 3. A new section is added to chapter 40.14 RCW to read as follows:

The local government archives account is created in the state treasury. All receipts collected by the county auditors under RCW 40.14.027 and 36.22.175 for local government services, such as providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management, must be deposited into the account, and expenditures from the account may be used only for these purposes.

Sec. 4. RCW 40.14.027 and 2001 c 146 s 4 are each amended to read as follows:

State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in RCW 36.18.012(10). The surcharge revenue shall be transmitted to the state treasurer for deposit in the archives and records management account.

Surcharge revenue deposited in the local government archives ~~((and records management))~~ account under section 3 of this act shall be expended by the secretary of state exclusively for disaster recovery, essential records protection services, and records management training for local government agencies by the division of archives and records management. The secretary of state shall, with local government representatives, establish a committee to advise the state archivist on the local government archives and records management program.

Sec. 5. RCW 36.22.175 and 2001 2nd sp.s. c 13 s 1 are each amended to read as follows:

(1) In addition to any other charge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for each document recorded. Revenue generated through this surcharge shall be transmitted monthly to the state treasurer for deposit in the local government archives (~~and records management~~) account under section 3 of this act. These funds shall be used solely for providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management.

The division of archives and records management within the office of the secretary of state shall provide records management training for local governments and shall establish a competitive grant program to solicit and prioritize project proposals from local governments for potential funding to be paid for by funds from the auditor surcharge and tax warrant surcharge revenues. Application for specific projects may be made by local government agencies only. The state archivist in consultation with the advisory committee established under RCW 40.14.027 shall adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria including requirements for records management training for grant recipients.

(2) The advisory committee established under RCW 40.14.027 shall review grant proposals and establish a prioritized list of projects to be considered for funding by January 1st of each even-numbered year, beginning in 2002. The evaluation of proposals and development of the prioritized list must be developed through open public meetings. Funding for projects shall be granted according to the ranking of each application on the prioritized list and projects will be funded only to the extent that funds are available. A grant award may have an effective date other than the date the project is placed on the prioritized list.

(3) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded after January 1, 2002. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives (~~and records management~~) account under section 3 of this act to be used exclusively for the construction and improvement of a specialized regional facility located in eastern Washington designed to serve the archives, records management, and digital data management needs of local government.

To the extent the facilities are used for the storage and retrieval of state agency records and digital data, that portion of the construction of such facilities used for state government records and data shall be supported by other charges and fees paid by state agencies and shall not be supported by the surcharge authorized in this subsection.

At such time that all debt service from construction on such facility has been paid, fifty percent of the surcharge authorized by this subsection shall be reverted to the centennial document preservation and modernization account as prescribed in RCW 36.22.170 and fifty percent of the surcharge authorized by this section shall be reverted to the state treasurer for deposit in the archives and

records management account to serve the archives, records management, and digital data management needs of local government.

Passed by the Senate March 19, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 164

[House Bill 1154]

SECRETARY OF STATE—FUNDING

AN ACT Relating to funding and expenditures of the secretary of state; amending RCW 42.17.710; adding new sections to chapter 43.07 RCW; and adding a new section to chapter 42.52 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.07 RCW to read as follows:

(1) The secretary of state may solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms.

(2) Moneys received under this section may be used only for the following purposes:

- (a) Conducting oral histories;
- (b) Archival activities; and
- (c) Washington state library activities.

(3) Moneys received under this section must be deposited in the oral history, state library, and archives account established in section 2 of this act.

(4) The secretary of state shall adopt rules to govern and protect the receipt and expenditure of the proceeds.

NEW SECTION. Sec. 2. A new section is added to chapter 43.07 RCW to read as follows:

The oral history, state library, and archives account is created in the custody of the state treasurer. All moneys received under section 1 of this act must be deposited in the account. Expenditures from the account may be made only for the purposes of the oral history program under RCW 43.07.220, archives program under RCW 40.14.020, and state library program under chapter 27.04 RCW. Only the secretary of state or the secretary of state's designee may authorize expenditures from the account. An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW.

Sec. 3. RCW 42.17.710 and 1993 c 2 s 11 are each amended to read as follows:

(1) During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing thirty days past the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state

official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt.

(2) This section does not apply to activities authorized in section 1 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 42.52 RCW to read as follows:

This chapter does not prohibit the secretary of state or a designee from soliciting and accepting contributions to the oral history, state library, and archives account created in section 2 of this act.

Passed by the House February 10, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 165

[Engrossed Senate Bill 5256]

RULE-MAKING PROCEDURES

AN ACT Relating to rule-making procedures; and amending RCW 34.05.320, 34.05.328, and 50.13.060.

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

Sec. 1. RCW 34.05.320 and 1995 c 403 s 302 are each amended to read as follows:

(1) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A summary of the rule and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a copy of such law or court decision shall be attached to the purpose statement;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

(j) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make;

(k) A copy of the small business economic impact statement prepared under chapter 19.85 RCW, or an explanation for why the agency did not prepare the statement; ~~((and))~~

(l) A statement indicating whether RCW 34.05.328 applies to the rule adoption; ~~and~~

(m) If RCW 34.05.328 does apply, a statement indicating that a copy of the preliminary cost-benefit analysis described in RCW 34.05.328(1)(c) is available.

(2) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the notice on file and available for public inspection and shall forward three copies of the notice to the rules review committee.

(3) No later than three days after its publication in the state register, the agency shall cause a copy of the notice of proposed rule adoption to be mailed to each person, city, and county that has made a request to the agency for a mailed copy of such notices. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing.

Sec. 2. RCW 34.05.328 and 1997 c 430 s 1 are each amended to read as follows:

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

~~((d))~~ (e) Determine, after considering alternative versions of the rule and the analysis required under (b) ~~((and))~~, (c), ~~and~~ (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

~~((e))~~ (f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

~~((#))~~ (g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

~~((#))~~ (h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

~~((#))~~ (i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through ~~((#))~~ (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Provide to the business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(b), the agency shall report to the legislature pursuant to (c) of this subsection;

(c) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter ((75.20)) 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule 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.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards; or

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state

agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

Sec. 3. RCW 50.13.060 and 2000 c 134 s 2 are each amended to read as follows:

(1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (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) and (d). 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 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, 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.

Passed by the Senate February 11, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 166

[Senate Bill 5512]

SMALL BUSINESSES—IMPACT STATEMENTS

AN ACT Relating to small business economic impact statements; and amending RCW 19.85.020.

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

Sec. 1. RCW 19.85.020 and 1994 c 249 s 10 are each amended to read as follows:

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

(1) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, (~~that has the purpose of making a profit,~~) and that has fifty or fewer employees.

(2) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.

(3) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce. However, if the use of a four-digit standard industrial classification would result in the release of data that would violate state confidentiality laws, "industry" means all businesses in a three-digit standard industrial classification.

Passed by the Senate March 17, 2003.

Passed by the House April 18, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 167

[Substitute Senate Bill 5051]

STRONG BEER

AN ACT Relating to strong beer; amending RCW 66.24.244, 66.24.250, 66.24.261, 66.24.270, 66.24.290, 66.24.320, 66.24.330, 66.24.360, 66.24.371, 66.24.452, and 82.08.150; creating new sections; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 66.24.244 and 1998 c 126 s 3 are each amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery 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) The board may issue an endorsement to this license allowing for on-premises consumption of beer, including strong beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4) The microbrewer obtaining such endorsement must determine, at the time the endorsement is issued, whether the licensed premises will be operated either as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.

Sec. 2. RCW 66.24.250 and 1997 c 321 s 13 are each amended to read as follows:

There shall be a license for beer distributors to sell beer and strong beer, purchased from licensed Washington breweries, beer certificate of approval holders (B5), licensed beer importers, or suppliers of foreign beer located outside the state of Washington, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit.

Sec. 3. RCW 66.24.261 and 1997 c 321 s 14 are each amended to read as follows:

There shall be a license for beer importers that authorizes the licensee to import beer and strong beer manufactured within the United States by certificate of approval holders (B5) into the state of Washington. The licensee may also import beer and strong beer manufactured outside the United States.

(1) Beer and strong beer so imported may be sold to licensed beer distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a beer importer shall establish and maintain a principal office within the state at which shall be kept proper records of all beer and strong beer imported into the state under this license.

(3) No beer importer's license shall be granted to a nonresident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of beer and strong beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer and strong beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer or strong beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported nor shall it certify beer or strong beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year.

Sec. 4. RCW 66.24.270 and 1997 c 321 s 15 are each amended to read as follows:

(1) Every person, firm or corporation, holding a license to manufacture malt liquors or strong beer within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors and strong beer sold for resale during the preceding calendar month to each beer distributor within the state of Washington.

(2) A United States brewery or manufacturer of beer or strong beer, located outside the state of Washington, must hold a certificate of approval (B5) to allow sales and shipment of the certificate of approval holder's beer or strong beer to licensed Washington beer distributors or importers. The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer or strong beer shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer and strong beer sold or delivered to each licensed beer distributor or importer during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of beer or strong beer and all general sales corporations or agencies maintained by them, and all of their trade representatives, corporations, and agencies, shall and will faithfully comply with all laws of the state of

Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per year, which sum shall accompany the application for such certificate.

Sec. 5. RCW 66.24.290 and 1999 c 281 s 14 are each amended to read as follows:

(1) Any microbrewer or domestic brewery or beer distributor licensed under this title may sell and deliver beer and strong beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewery or beer distributor shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer and strong beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer, including strong beer, shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons. Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer and strong beer shall be sold by breweries and distributors in sealed barrels or packages. The moneys collected under this subsection shall be distributed as follows: (a) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (b) of the remaining moneys: (i) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (ii) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(2) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the health services account under RCW 43.72.900.

(4) An additional tax is imposed on all beer and strong beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer and strong beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) The board may make refunds for all taxes paid on beer and strong beer exported from the state for use outside the state.

(6) The board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his or her license until all taxes are paid.

~~((7) The tax imposed under this section shall not apply to "strong beer" as defined in this title.))~~

Sec. 6. RCW 66.24.320 and 1998 c 126 s 4 are each amended to read as follows:

There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under the endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived.

Sec. 7. RCW 66.24.330 and 1997 c 321 s 19 are each amended to read as follows:

There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license. Licensees who have a fee increase of more than one hundred dollars as a result of this change shall have their fees increased fifty percent of the amount the first renewal year and the remaining amount beginning with the second renewal period. New licensees obtaining a license after July 1, 1998, shall pay the full amount of four hundred dollars.

Sec. 8. RCW 66.24.360 and 1997 c 321 s 22 are each amended to read as follows:

There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.

(d) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license.

Sec. 9. RCW 66.24.371 and 1997 c 321 s 23 are each amended to read as follows:

(1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine.

Sec. 10. RCW 66.24.452 and 2001 c 199 s 2 are each amended to read as follows:

(1) There shall be a beer and wine license to be issued to a private club for sale of beer, strong beer, and wine for on-premises consumption.

(2) Beer, strong beer, and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits, strong beer, and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this ((chapter {section})) section is one hundred twenty dollars.

Sec. 11. RCW 82.08.150 and 1998 c 126 s 16 are each amended to read as follows:

(1) There is levied and shall be collected a tax upon each retail sale of spirits((, ~~or strong beer~~)) in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits((, ~~or strong beer~~)) in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to spirits, beer, and wine restaurant licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price

thereafter. This additional tax applies to all such sales to spirits, beer, and wine restaurant licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(7) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits (~~(or strong beer)~~) in the original package.

(8) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

(9) As used in this section, the terms, "~~spirits(," "strong beer,)"~~" and "package" shall have the meaning ascribed to them in chapter 66.04 RCW.

NEW SECTION. Sec. 12. Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after the effective date of this section.

NEW SECTION. Sec. 13. The liquor control board shall report to the legislature by December 1, 2004, on the impacts of strong beer sales.

NEW SECTION. Sec. 14. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the Senate April 17, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 168

[Senate Bill 5783]

SALES AND USE TAX

AN ACT Relating to implementing the streamlined sales and use tax agreement; amending RCW 82.08.010, 82.12.010, 82.04.040, 82.04.050, 82.14.050, 82.14.070, 82.08.050, 82.04.470, 82.08.064, 82.14.055, 82.32.430, 82.08.02566, 82.12.02566, 82.08.037, 82.12.020, 82.12.040, 82.12.060, 82.08.0293, 82.12.0293, 66.28.190, 82.04.272, 82.04.4289, 82.08.0281, 82.12.0275, 82.08.0283, 82.12.0277, 82.14.020, 82.04.215, 82.04.29001, 82.12.0284, and 82.04.120; amending 2002 c 67 s 18 (uncodified); reenacting and amending RCW 82.14.020; adding new sections to chapter 82.02 RCW; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.32 RCW; adding new sections to chapter 82.12 RCW; adding a new section to chapter 82.04 RCW; creating a new section; and providing effective dates.

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

INTENT

NEW SECTION. **Sec. 1.** A new section is added to chapter 82.02 RCW to read as follows:

(1) It is the intent of the legislature that Washington join as a member state in the streamlined sales and use tax agreement referred to in chapter 82.58 RCW. The agreement provides for a simpler and more uniform sales and use tax structure among states that have sales and use taxes. The intent of the legislature is to bring Washington's sales and use tax system into compliance with the agreement so that Washington may join as a member state and have a voice in the development and administration of the system, and to substantially reduce the burden of tax compliance on sellers.

(2) This act does not include changes to Washington law that may be required in the future and that are not fully developed under the agreement. These include, but are not limited to, changes relating to online registration, reporting, and remitting of payments by businesses for sales and use tax purposes, monetary allowances for sellers and their agents, sourcing, and amnesty for businesses registering under the agreement.

(3) It is the intent of the legislature that the provisions of chapters 82.08 and 82.12 RCW be interpreted and applied consistently with the agreement.

(4) The department of revenue shall report to the fiscal committees of the legislature on January 1, 2004, and each January 1st thereafter, on the development of the agreement and shall recommend changes to the sales and use tax structure and propose legislation as may be necessary to keep Washington in compliance with the agreement.

PART I—DEFINITIONS

Sec. 101. RCW 82.08.010 and 1985 c 38 s 3 are each amended to read as follows:

For the purposes of this chapter:

(1) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, ((whether money, credits, rights, or other property except trade in property of like kind, expressed in the terms of money paid or delivered by a buyer to a seller without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expenses whatsoever paid or accrued and without any deduction on account of losses; but shall not include the amount of cash discount actually taken by a buyer; and shall be subject to modification to the extent modification is provided for in RCW 82.08.080.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe)) except trade in property of like kind, including cash, credit, property, and services, for which tangible personal property or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented.

valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (a) The seller's cost of the property sold; (b) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (c) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (d) delivery charges; (e) installation charges; and (f) the value of exempt tangible personal property given to the purchaser where taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe.

"Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean the state and its departments and institutions when making sales to the state and its departments and institutions;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter;

(6) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that

can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software.

Sec. 102. RCW 82.12.010 and 2002 c 367 s 3 are each amended to read as follows:

For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010.

~~(2)(a) "Value of the article used" shall ((mean the consideration, whether money, credit, rights, or other property except trade in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller)) be the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. ((The term includes the amount of any freight, delivery, or other like transportation charge paid or given by the purchaser to the seller with respect to the purchase of such article-))~~ The term also includes, in addition to the ~~((consideration paid or given or contracted to be paid or given))~~ purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department ~~((of revenue))~~ may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of

the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the ~~((retail selling))~~ purchase price ~~((as defined in RCW 82.08.010;))~~ of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

~~((2))~~ (3) "Value of the service used" means the ~~((consideration, whether money, credit, rights, or other property, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller))~~ purchase price for the service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department ~~((of revenue))~~ may prescribe;

~~((3))~~ (4) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state; and

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

~~((4))~~ (5) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

~~((5))~~ (6) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

~~((6))~~ (7) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to

the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (~~((6))~~) (7), the use of the property shall be deemed to be by such consumer.

Sec. 103. RCW 82.04.040 and 1961 c 15 s 82.04.040 are each amended to read as follows:

(1) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes (~~(renting or leasing)~~) lease or rental, conditional sale contracts, (~~(leases with option to purchase;)~~) and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

(3)(a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" includes transactions under agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003. The definition in this subsection (3) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the United States internal revenue code, Washington state's commercial code, or other provisions of federal, state, or local law.

(b) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of party under an agreement that requires the transfer of title upon completion of required payments, and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection (3)(b)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

Sec. I04. RCW 82.04.050 and 2002 c 178 s 1 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons

irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include;

~~(i) The renting or leasing of tangible personal property to consumers ((and the rental of equipment with an operator)); and~~

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of ~~((earned))~~ prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of ~~((earned))~~ prewritten computer software.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or

improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(10) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2).

PART II—ADMINISTRATIVE PROVISIONS

Sec. 201. RCW 82.14.050 and 2002 c 56 s 406 are each amended to read as follows:

The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, and regional transportation investment districts shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which 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 the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts may not conduct independent sales or use tax audits of sellers registered under the streamlined sales tax agreement. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts monthly.

Sec. 202. RCW 82.14.070 and 2000 c 104 s 5 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))~~ identical to the state sales and use tax, unless otherwise prohibited by federal law, 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.

Sec. 203. RCW 82.08.050 and 2001 c 188 s 4 are each amended to read as follows:

The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060. The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter shall be guilty of a gross misdemeanor.

In case any seller fails to collect the tax herein imposed or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer ~~((in good faith a properly executed))~~ a resale certificate under RCW 82.04.470 ~~((or))~~, a copy of a direct pay permit issued under RCW 82.32.087, information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department. Sellers shall not be relieved from personal liability for the amount of the tax unless they maintain proper records of exempt transactions and provide them to the department when requested.

The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who 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 buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor. The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer 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 buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

Sec. 204. RCW 82.04.470 and 1993 sp.s. c 25 s 701 are each amended to read as follows:

(1) Unless a seller has taken from the buyer a resale certificate, the burden of proving that a sale of tangible personal property, or of services, was not a sale at retail shall be upon the person who made it.

(2) If a seller does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of sales tax.

(3) Resale certificates shall be valid for a period of four years from the date the certificate is provided to the seller.

(4) The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

(5) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information:

(a) The name and address of the buyer;

(b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to ~~((be))~~ be registered;

(c) The type of business engaged in;

(d) The categories of items or services to be purchased for resale or that are exempt, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(e) The date on which the certificate was provided;

(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are exempt from tax pursuant to statute;

(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale or exemption privilege claimed on the certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law;

(h) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(i) The signature of the authorized individual; and

(j) The name of the seller.

(6) Subsection (5)(h), (i), and (j) of this section does not apply if the certificate is provided in a format other than paper. If the certificate is provided in a format other than paper, the name of the individual providing the certificate must be included in the certificate.

Sec. 205. RCW 82.08.064 and 2000 c 104 s 3 are each amended to read as follows:

(1) A sales and use tax rate change under this chapter or chapter 82.12 RCW shall be imposed ~~((+))~~ (a) no sooner than seventy-five days after its enactment into law and ~~((2))~~ (b) only on the first day of January, April, July, or October.

(2)(a) A sales and use tax rate increase under this chapter or chapter 82.12 RCW imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A sales and use tax rate decrease under this chapter or chapter 82.12 RCW imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (2), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing.

Sec. 206. RCW 82.14.055 and 2001 c 320 s 7 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), and (4) of this section, 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) In the case of a local sales and use tax that is a credit against the state sales tax or use tax, a local sales and use tax change shall take effect (a) no sooner than thirty days after the department receives notice of the change and (b) only on the first day of a month.

(3)(a) A local sales and use tax rate increase imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A local sales and use tax rate decrease imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (3), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing.

(4) 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.

Sec. 207. RCW 82.32.430 and 2001 c 320 s 11 are each amended to read as follows:

(1) A person who collects and remits sales or use tax to the department and who calculates the tax using geographic information system 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.

(2) Except as provided in subsection (3) of this section, the department shall notify sellers who collect and remit sales or use tax to the department of changes in boundaries and rates to taxes imposed by chapter 82.14 RCW no later than sixty days before the effective date of the change.

(3) The department shall notify sellers who collect and remit sales or use tax to the department and make sales from printed catalogs of changes, as to such sales, of boundaries and rates to taxes imposed by chapter 82.14 RCW no later than one hundred twenty days before the effective date of the change.

(4) Sellers who have not received timely notice of rate and boundary changes under subsections (2) and (3) of this section due to actions or omissions of the department are not liable for the difference in the amount due until they have received the appropriate period of notice. Purchasers are liable for any uncollected amounts of tax.

Sec. 208. RCW 82.08.02566 and 1997 c 302 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or to sales of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply to sales to any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.12.02566 shall not exceed one hundred thousand dollars for any person during any calendar year.

(4) Sellers shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department.

Sec. 209. RCW 82.12.02566 and 1997 c 302 s 2 are each amended to read as follows:

(1) The provisions of this chapter shall not apply with respect to the use of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or in respect to the use of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply in respect to the use of tangible personal property by any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.08.02566 shall not exceed one hundred thousand dollars for any person during any calendar year.

(4) Sellers obligated to collect use tax shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department.

NEW SECTION. Sec. 210. A new section is added to chapter 82.08 RCW to read as follows:

Sellers shall compute the tax due under this chapter and chapters 82.12 and 82.14 RCW by carrying the computation to the third decimal place and rounding to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. Sellers may elect to compute the tax due on a transaction on an item or an invoice basis. This rounding rule shall be applied to the aggregated state and local taxes.

NEW SECTION. Sec. 211. A new section is added to chapter 82.32 RCW to read as follows:

A purchaser's cause of action against the seller for over-collected sales or use tax does not accrue until the purchaser has provided written notice to the seller and the seller has sixty days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

Sec. 212. RCW 82.08.037 and 1982 1st ex.s. c 35 s 35 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for sales taxes previously paid on debts which are ~~((deductible as worthless for federal income tax purposes))~~ bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, except for:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt; and

(c) Repossessed property.

(2) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(3) Payments on a bad debt are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(4) If the seller uses a certified service provider to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount to the seller.

NEW SECTION. Sec. 213. A new section is added to chapter 82.32 RCW to read as follows:

The department may not attribute nexus with Washington to any seller solely by virtue of the seller registering under the streamlined sales and use tax agreement.

Sec. 214. RCW 82.12.020 and 2002 c 367 s 4 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer:

(a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7); or (b) any ~~((earned))~~

prewritten computer software, regardless of the method of delivery, but excluding ~~((earned))~~ prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both.

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a) and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters.

(4) The tax shall be levied and collected in an amount equal to the value of the article used or value of the service used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020, except in the case of a seller required to collect use tax from the purchaser, the tax shall be collected in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020.

Sec. 215. RCW 82.12.040 and 2001 c 188 s 5 are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section shall be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department shall in rules specify activities which constitute engaging in business activity within this state, and shall keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), of his or her principals ~~((made))~~ for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the department and any retailer who appropriates or converts the tax collected to ~~((his))~~ the retailer's own use or to

any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed shall be guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of ~~((his))~~ the seller's own acts or the result of acts or conditions beyond ~~((his))~~ the seller's control, ~~((he))~~ the seller shall nevertheless, be personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor.

Sec. 216. RCW 82.12.060 and 1975 1st ex.s. c 278 s 54 are each amended to read as follows:

In the case of installment sales and leases of personal property, the department, by ~~((regulation))~~ rule, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due.

~~((In the case of property acquired by bailment, the department, by regulation, may provide for payment of the tax due in installments based on the reasonable rental for the property as determined under RCW 82.12.010(1).))~~

PART III—FOOD

Sec. 301. RCW 82.08.0293 and 1988 c 103 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of food ~~((products for human consumption.~~

~~"Food products" include cereals and cereal products, oleomargarine, meat and meat products including livestock sold for personal consumption, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.~~

~~"Food products" include milk and milk products, milk shakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.~~

~~"Food products" include all fruit juices, vegetable juices, and other beverages except bottled water, spirituous, malt or vinous liquors or carbonated beverages, whether liquid or frozen.~~

~~"Food products" do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts)) and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:~~

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) The exemption of "food ((products)) and food ingredients" provided for in subsection (1) of this section shall not apply(~~:(a) When the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "takeout" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer, or (b) when the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, or (c) to a food product, when sold by the retail vendor, which by law must be handled on the vendor's premises by a person with a food and beverage service worker's permit under RCW 69.06.010, including but not be limited to sandwiches prepared or chicken cooked on the premises, deli trays, home-delivered pizzas or meals, and salad bars but excluding:~~

~~(i) Raw meat prepared by persons who slaughter animals, including fish and fowl; or dress or wrap slaughtered raw meat such as fish mongers, butchers, or meat wrappers;~~

~~(ii) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;~~

~~(iii) Bakeries which only sell baked goods;~~

~~(iv) Combination bakery businesses, as prescribed by rule of the department, to the extent that sales of baked goods are separately accounted for and the baked goods claimed for exemption are not sold as part of meals or with beverages in unsealed containers; or~~

~~(v) Bulk food products sold from bins or barrels, including but not limited to flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa) to prepared food, soft drinks, or dietary supplements.~~

(a) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

"Prepared food" in (a)(ii) of this subsection, does not include food that is only cut, repackaged, or pasteurized by the seller and raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness; or bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(b) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(c) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients: A vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection; and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(ii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(3) Notwithstanding anything in this section to the contrary, the exemption of "~~food ((products))~~ and food ingredients" provided in this section shall apply to ~~food ((products))~~ and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) Which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.

(4) Subsection (1) of this section notwithstanding, the retail sale of ~~food ((products))~~ and food ingredients is subject to sales tax under RCW 82.08.020 if the ~~food ((products))~~ and food ingredients are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

This subsection does not apply to hot prepared ~~food ((products))~~ and food ingredients, other than ~~food ((products))~~ and food ingredients which are heated after they have been dispensed from the vending machine.

For tax collected under this subsection, the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

NEW SECTION. Sec. 302. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of dietary supplements for human use dispensed or to be dispensed to patients, pursuant to a prescription. "Dietary supplement" has the same meaning as in RCW 82.08.0293.

Sec. 303. RCW 82.12.0293 and 1988 c 103 s 2 are each amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of ~~food ((products))~~ and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

~~((“Food products” include cereals and cereal products, oleomargarine, meat and meat products including livestock sold for personal consumption, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.~~

~~“Food products” include milk and milk products, milk shakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.~~

~~“Food products” include all fruit juices, vegetable juices, and other beverages except bottled water, spirituous, malt or vinous liquors or carbonated beverages, whether liquid or frozen.~~

~~“Food products” do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.)~~

(2) The exemption of “food ((products)) and food ingredients” provided for in subsection (1) of this section shall not apply(~~((: (a) When the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a “takeout” or “to go” order and are actually packaged or wrapped and taken from the premises of the retailer, or (b) when the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, or (c) to a food product, when sold by the retail vendor, which by law must be handled on the vendor’s premises by a person with a food and beverage service worker’s permit under RCW 69.06.010, including but not be limited to sandwiches prepared or chicken cooked on the premises, deli trays, home delivered pizzas or meals, and salad bars but excluding:~~

~~(i) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fish mongers, butchers, or meat wrappers;~~

~~(ii) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;~~

~~(iii) Bakeries which only sell baked goods;~~

~~(iv) Combination bakery businesses, as prescribed by rule of the department, to the extent that sales of baked goods are separately accounted for and the baked goods claimed for exemption are not sold as part of meals or with beverages in unsealed containers; or~~

~~(v) Bulk food products sold from bins or barrels, including but not limited to flour, fruits, vegetables, sugar, salt, candy, chips, and cocoa)) to prepared food, soft drinks, or dietary supplements. “Prepared food,” “soft drinks,” and “dietary supplements” have the same meanings as in RCW 82.08.0293.~~

(3) Notwithstanding anything in this section to the contrary, the exemption of “food ((products)) and food ingredients” provided in this section shall apply to food ((products)) and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) Which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.

NEW SECTION. Sec. 304. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply to the use of dietary supplements dispensed or to be dispensed to patients, pursuant to a prescription, if the dietary supplements are for human use. "Dietary supplement" has the same meaning as in RCW 82.08.0293.

Sec. 305. RCW 66.28.190 and 1997 c 321 s 52 are each amended to read as follows:

RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food (~~(products)~~) and food ingredients on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food (~~(products)~~) and food ingredients to ensure that such persons are in compliance with RCW 66.28.010.

For the purpose of this section, "nonliquor food (~~(products)~~) and food ingredients" includes all food (~~(products)~~) and food ingredients for human consumption as defined in RCW 82.08.0293 as it exists on July 1, (~~1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products~~) 2004.

PART IV—MEDICAL PROVISIONS

Sec. 401. RCW 82.04.272 and 1998 c 343 s I are each amended to read as follows:

(1) Upon every person engaging within this state in the business of warehousing and reselling (~~(prescription)~~) drugs for human use pursuant to a prescription; as to such persons, the amount of the tax shall be equal to the gross income of the business multiplied by the rate of 0.138 percent.

(2) For the purposes of this section:

(a) "Prescription" and "drug" (~~(has)~~) have the same meaning as (~~(that term is given)~~) in RCW 82.08.0281; and

(b) "Warehousing and reselling (~~(prescription)~~) drugs for human use pursuant to a prescription" means the buying of (~~(prescription)~~) drugs for human use pursuant to a prescription from a manufacturer or another wholesaler, and reselling of the drugs to persons selling at retail or to hospitals, clinics, health care providers, or other providers of health care services, by a wholesaler or retailer who is registered with the federal drug enforcement administration and licensed by the state board of pharmacy.

Sec. 402. RCW 82.04.4289 and 1998 c 325 s 1 are each amended to read as follows:

This chapter does not apply to amounts derived as compensation for services rendered to patients or from sales of (~~(prescription)~~) drugs (~~(as defined~~

~~in RCW 82.08.0281))~~ for human use pursuant to a prescription furnished as an integral part of services rendered to patients by a kidney dialysis facility operated as a nonprofit corporation, a nonprofit hospice agency licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly, to any person other than the institution entitled to deduction hereunder. "Prescription" and "drug" have the same meaning as in RCW 82.08.0281.

Sec. 403. RCW 82.08.0281 and 1993 sp.s. c 25 s 308 are each amended to read as follows:

~~(1) The tax levied by RCW 82.08.020 shall not apply to sales of ((prescription)) drugs(, including sales to the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge. The term "prescription drugs" shall include any medicine, drug, prescription lens, or other substance other than food for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans, or for use for family planning purposes, including the prevention of conception, supplied:~~

~~(1) By a family planning clinic that is under contract with the department of health to provide family planning services; or~~

~~(2) Under the written prescription to a pharmacist by a practitioner authorized by law of this state or laws of another jurisdiction to issue prescriptions; or~~

~~(3) Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by a duly licensed pharmacist; or~~

~~(4) By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist; or~~

~~(5) By physicians or optometrists by way of written directions and specifications for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans))~~ for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(2) The tax levied by RCW 82.08.020 shall not apply to sales of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The tax levied by RCW 82.08.020 shall not apply to sales of drugs and devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

(4) The definitions in this subsection apply throughout this section.

(a) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(b) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body.

(c) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as amended or renumbered on January 1, 2003. The label includes:

(i) A "drug facts" panel; or

(ii) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation.

NEW SECTION. Sec. 404. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of disposable devices used or to be used to deliver drugs for human use, pursuant to a prescription. "Disposable devices used to deliver drugs" means single use items such as syringes, tubing, or catheters.

NEW SECTION. Sec. 405. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of over-the-counter drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription. "Over-the-counter drug" has the same meaning as in RCW 82.08.0281.

Sec. 406. RCW 82.12.0275 and 1993 s.p.s. c 25 s 309 are each amended to read as follows:

~~(1) The provisions of this chapter shall not apply in respect to the use of ((prescription)) drugs(, including the use by the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge. The term "prescription drugs" shall include any medicine, drug, prescription lens, or other substance other than food for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans, or for use for family planning purposes, including the prevention of conception, supplied:~~

~~(1) By a family planning clinic that is under contract with the department of health to provide family planning services; or~~

~~(2) Under the written prescription to a pharmacist by a practitioner authorized by law of this state or laws of another jurisdiction to issue prescriptions; or~~

~~(3) Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by a duly licensed pharmacist; or~~

~~(4) By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist; or~~

~~(5) By physicians or optometrists by way of written directions and specifications for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans)) dispensed or to be dispensed to patients, pursuant to a prescription, if the drugs are for human use.~~

(2) The provisions of this chapter shall not apply in respect to the use of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The provisions of this chapter shall not apply in respect to the use of drugs or devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

(4) As used in this section, "prescription" and "drug" have the same meanings as in RCW 82.08.0281.

NEW SECTION. Sec. 407. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply to the use of disposable devices used to deliver drugs for human use, pursuant to a prescription. Disposable devices means the same as provided in section 404 of this act.

NEW SECTION. Sec. 408. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply to the use of over-the-counter drugs dispensed or to be dispensed to patients, pursuant to a prescription, if the over-the-counter drugs are for human use. "Over-the-counter drug" has the same meaning as in RCW 82.08.0281.

Sec. 409. RCW 82.08.0283 and 2001 c 75 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of (~~insulin;~~) prosthetic devices (~~and the components thereof; dental appliances, devices, restorations, and substitutes, and the components thereof, including but not limited to full and partial dentures, crowns, inlays, fillings, braces, and retainers; orthotic devices;~~) prescribed for an individual by a person licensed under chapter(s) 18.22, 18.25, 18.57, or 18.71 RCW; (~~hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW, and the components thereof;~~) medicines of mineral, animal, and botanical origin (~~prescribed;~~) administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; (~~ostomie items;~~) and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under this section.

(2) The exemption in subsection (1) of this section shall not apply to sales of durable medical equipment or mobility enhancing equipment.

(3) The definitions in this subsection apply throughout this section.

(a) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct a physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body.

(b) "Durable medical equipment" means equipment, including repair and replacement for durable medical equipment, but does not include mobility enhancing equipment, that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury;

and

(iv) Does not work in or on the body.

(c) "Mobility enhancing equipment" means equipment, including repair and replacement parts for mobility enhancing equipment, but does not include medical equipment, that:

(i) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either at home or a motor vehicle;

(ii) Is not generally used by persons with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

NEW SECTION. Sec. 410. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription.

NEW SECTION. Sec. 411. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply to the use of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription.

Sec. 412. RCW 82.12.0277 and 2001 c 75 s 2 are each amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of ~~((insulin;))~~ prosthetic devices ~~((and the components thereof; dental appliances, devices, restorations, and substitutes, and the components thereof, including but not limited to full and partial dentures, crowns, inlays, fillings, braces, and retainers; orthotic devices))~~ prescribed for an individual by a person licensed under chapter ~~((s))~~ 18.22, 18.25, 18.57, or 18.71 RCW; ~~((hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW, and the components thereof;))~~ medicines of mineral, animal, and botanical origin ~~((prescribed;))~~ administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ~~((ostomic items;))~~ and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) The exemption provided by subsection (1) of this section shall not apply to the use of durable medical equipment or mobility enhancing equipment.

(3) "Prosthetic device," "durable medical equipment," and "mobility enhancing equipment" have the same meanings as in RCW 82.08.0283.

PART V—SOURCING

NEW SECTION. Sec. 501. A new section is added to chapter 82.32 RCW to read as follows:

(1) Except for the defined telecommunications services listed in this section, the sale of telephone service as defined in RCW 82.04.065 sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in this section, a sale of telephone service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telephone service as defined in RCW 82.04.065 that are listed in this section shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its home service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service is sourced as follows:

(i) When a prepaid calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(ii) When a prepaid calling service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(vi) In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, (c)(iv) of this subsection shall include as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The definitions in this subsection apply throughout this chapter.

(a) "Air-ground radiotelephone service" means air-ground radio service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered as of January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who uses the telecommunications service. In the case of an entity, the term end user means the individual who uses the service on behalf of the entity.

(g) "Home service provider" means the same as that term is defined in RCW 82.04.065.

(h) "Mobile telecommunications service" means the same as that term is defined in RCW 82.04.065.

(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of

primary use" must be within the licensed service area of the home service provider.

(j) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service.

(k) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(l) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(m) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(ii) If the location in (m)(i) of this subsection is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its home service provider, where the system used to transport such signals is not that of the seller;

(iii) If the location in (m)(i) and (ii) of this subsection are not known, the location of the customer's place of primary use.

Sec. 502. RCW 82.14.020 and 2002 c 367 s 6 and 2002 c 67 s 7 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal, business, or professional services shall be deemed to have occurred at the place at which such services were primarily performed, except that for the performance of a tow truck service, as defined in RCW 46.55.010, the retail sale shall be deemed to have occurred at the place of business of the operator of the tow truck service;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the place of primary use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of RCW 82.04.050(2), and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5)(a) A retail sale consisting of the providing to a consumer of telephone service, as defined in RCW 82.04.065, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section or a sale of mobile telecommunications services, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered;

(b) A retail sale consisting of the providing ~~((to a consumer of mobile telecommunications services is deemed to have occurred at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, consistent with the mobile telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126))~~ of telecommunications services shall be sourced in accordance with section 501 of this act;

(6) A retail sale of linen and uniform supply services is deemed to occur as provided in RCW 82.08.0202;

(7) "City" means a city or town;

(8) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(9) "Taxable event" shall mean any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(10) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city.

Sec. 503. RCW 82.14.020 and 2002 c 367 s 6 are each amended to read as follows:

For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal, business, or professional services shall be deemed to have occurred at the place at which such services were primarily performed, except that for the performance of a tow truck service, as defined in RCW 46.55.010, the retail sale shall be deemed to have occurred at the place of business of the operator of the tow truck service;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of RCW 82.04.050(2), and a retail sale of taxable personal property to be installed by the seller shall be deemed to have

occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing ~~((to a consumer of telephone service, as defined in RCW 82.04.065, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered))~~ of telecommunications services shall be sourced in accordance with section 501 of this act;

(6) A retail sale of linen and uniform supply services is deemed to occur as provided in RCW 82.08.0202;

(7) "City" means a city or town;

(8) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(9) "Taxable event" shall mean any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(10) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city.

NEW SECTION. Sec. 504. The department of revenue shall conduct a study of the fiscal impact on local jurisdictions of the sourcing provisions proposed in the streamlined sales and use tax agreement. The department shall use, and regularly consult, a committee composed of city and county officials to assist with the study. Committee responsibilities include identification of elements of the study including mitigation options for jurisdictions negatively impacted by the sourcing provision. The department shall report the results of the study, which at minimum shall include the identification of the fiscal impacts on local governments of the sourcing provisions, by December 1, 2003, to the governor and fiscal committees of the legislature.

PART VI—SOFTWARE AND RELATED ITEMS

Sec. 601. RCW 82.04.215 and 1998 c 332 s 3 are each amended to read as follows:

(1) ~~((“Canned software” means software that is created for sale to more than one person))~~ “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. Consistent with this definition “computer software” includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software.

(3) “Custom software” means software created for a single person.

~~((3))~~ (4) "Customization of ~~((earned))~~ prewritten computer software" means any alteration, modification, or development of applications using or incorporating ~~((earned))~~ prewritten computer software for a specific person. "Customization of ~~((earned))~~ prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of ~~((earned))~~ prewritten computer software does not change the underlying character or taxability of the original ~~((earned))~~ prewritten computer software.

~~((4))~~ (5) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license.

~~((5))~~ (6) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

(7) "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

~~((6))~~ "Software" means any information, program, or routine, or any set of one or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes only those copies of such information, programs, or routines intended for use by an end user and specifically excludes retained rights in software and master copies of software. "Software" includes the associated documentation that describes the code and its use, operation, and maintenance and typically is delivered with the code to the consumer. All software is classified as either earned or custom.)

Sec. 602. RCW 82.04.29001 and 1998 c 332 s 4 are each amended to read as follows:

(1) The creation and distribution of custom software is a service taxable under RCW 82.04.290(2). Duplication of the software for the same person, or by the same person for its own use, does not change the character of the software.

(2) The customization of ~~((eanned))~~ prewritten computer software is a service taxable under RCW 82.04.290(2).

Sec. 603. RCW 82.12.0284 and 1983 1st ex.s. c 55 s 7 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" ~~((means a data processor that can perform substantial computation, including numerous arithmetic or logic operations, without intervention by a human operator during the run))~~ has the same meaning as in RCW 82.04.215.

Sec. 604. RCW 82.04.120 and 1999 sp.s. c 9 s 1 are each amended to read as follows:

"To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimiting, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; ~~((or))~~ packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

PART VII—STEAM, ELECTRICITY, AND ELECTRICAL ENERGY

NEW SECTION. Sec. 701. A new section is added to chapter 82.02 RCW to read as follows:

When the terms "ingredient," "component part," "incorporated into," "goods," "products," "byproducts," "materials," "consumables," and other similar terms denoting tangible items that may be used, sold, or consumed are used in this title, the terms do not include steam, electricity, or electrical energy.

NEW SECTION. Sec. 702. A new section is added to chapter 82.04 RCW to read as follows:

Consistent with section 701 of this act, when the terms "tangible personal property," "ingredient," "component part," "incorporated into," "goods," "products," "byproducts," "materials," "consumables," and other similar terms

denoting tangible items that may be used, sold, or consumed are used in this chapter, the terms do not include steam, electricity, or electrical energy.

NEW SECTION. Sec. 703. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of steam, electricity, or electrical energy.

NEW SECTION. Sec. 704. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of steam, electricity, or electrical energy.

PART VIII—RATE PROVISIONS

NEW SECTION. Sec. 801. A new section is added to chapter 82.02 RCW to read as follows:

(1) There shall be one statewide rate for sales and use taxes imposed at the state level. This subsection does not apply to the taxes imposed by RCW 82.12.022 or 82.18.020, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

(2) There shall be one jurisdiction-wide rate for local sales and use taxes imposed at levels below the state level. This subsection does not apply to the taxes imposed by chapter 67.28 RCW, RCW 67.40.090 or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

PART IX—MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 901. Part headings used in this act are not any part of the law.

Sec. 902. 2002 c 67 s 18 (uncodified) is amended to read as follows:

(1) If a court of competent jurisdiction enters a final judgment on the merits that is based on federal or state law, is no longer subject to appeal, and substantially limits or impairs the essential elements of P.L. 106-252(~~(f, 4 U.S.C.)~~), 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of 2002, then chapter 67, Laws of 2002 is null and void in its entirety.

(2) If the contingency in subsection (1) of this section occurs, section 502, chapter . . . , Laws of 2003 (section 502 of this act) is null and void.

NEW SECTION. Sec. 903. Sections 101 through 104, 201 through 216, 401 through 412, 501, 502, 601 through 604, 701 through 704, 801, 901, and 902 of this act take effect July 1, 2004. Sections 301 through 305 of this act take effect January 1, 2004.

Passed by the Senate April 26, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 169

[House Bill 1073]

PROPERTY TAXES—LEASEHOLD INTERESTS

AN ACT Relating to collection of property taxes on land subleased for residential and recreational purposes; and amending RCW 84.40.410.

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

Sec. 1. RCW 84.40.410 and 2001 c 26 s 3 are each amended to read as follows:

A leasehold interest consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes, together with any improvements thereon, shall be assessed and taxed in the same manner as privately owned real property. The sublessee of each lot, or the lessee if not subleased, is liable for the property tax on the lot and improvements thereon. If property tax for a lot or improvements thereon remains unpaid for more than three years from the date of delinquency, including any property taxes that are delinquent as of July 22, 2001, the county treasurer may proceed to collect the tax in the same manner as for other property, except that the lessor's interest in the property shall not be extinguished as a result of any action for the collection of tax. Collection of property taxes assessed on any such lot shall be enforceable by foreclosure proceedings ~~((against any improvement located on such lot,))~~ in accordance with real property foreclosure proceedings authorized in chapter 84.64 RCW. ~~((Collection of property taxes assessed against any mobile home located on any such lot shall proceed in the same manner as with mobile homes located on private property.))~~

Passed by the House March 11, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 170

[Substitute House Bill 1075]

TAXATION—FOREST LAND

AN ACT Relating to multiple incompatible amendments to forest tax statutes resulting from 2001 statutory changes; reenacting and amending RCW 84.33.130, 84.33.140, and 84.34.108; creating new sections; and repealing RCW 84.33.120.

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

NEW SECTION. Sec. 1. During the regular session of the 2001 legislature, RCW 84.33.120 was amended by section 3, chapter 185 and by section 1, chapter 305, and repealed by section 16, chapter 249, each without reference to the other. The purpose of sections 4 through 7 of this act is to resolve any uncertainty about the status of RCW 84.33.120 caused by the enactment of three changes involving RCW 84.33.120 during the 2001 regular legislative session.

(1) Chapter 249, Laws of 2001 both repealed RCW 84.33.120 and incorporated pertinent and vital parts of RCW 84.33.120 into RCW 84.33.140. The technical amendments made to RCW 84.33.120 by section 3, chapter 185, Laws of 2001 were also made to RCW 84.33.140 by section 5, chapter 185, Laws of 2001. The amendments made to RCW 84.33.120 by section 1, chapter

305, Laws of 2001 were also made to RCW 84.33.140 by section 2, chapter 305, Laws of 2001. Therefore, RCW 84.33.140 as amended during the 2001 regular legislative session embodies the pertinent and vital parts of RCW 84.33.120 and the 2001 amendments to RCW 84.33.120.

(2) The legislature intends to confirm the repeal of RCW 84.33.120, including the 2001 regular legislative session amendments to that section, as of the effective date of chapters 185, 249, and 305, Laws of 2001.

NEW SECTION. Sec. 2. During the regular session of the 2001 legislature, RCW 84.33.130 was amended by section 4, chapter 185 and by section 2, chapter 249, each without reference to the other. The purpose of section 4 of this act is to reenact and amend RCW 84.33.130 so that it reflects all amendments made by the legislature.

NEW SECTION. Sec. 3. During the regular session of the 2001 legislature, RCW 84.34.108 was amended by section 7, chapter 185, by section 14, chapter 249, and by section 3, chapter 305, each without reference to the other. The purpose of section 6 of this act is to reenact and amend RCW 84.34.108 so that it reflects all amendments made by the legislature and to clarify any misunderstanding as to how the exemption contained in chapter 305, Laws of 2001 is to be applied.

Sec. 4. RCW 84.33.130 and 2001 c 249 s 2 and 2001 c 185 s 4 are each reenacted and amended to read as follows:

(1) Notwithstanding any other provision of law, lands that were assessed as classified forest land before July 22, 2001, shall be designated forest land for the purposes of this chapter. The owners of previously classified forest land shall not be required to apply for designation under this chapter. As of July 22, 2001, the land and timber on such land shall be assessed and taxed in accordance with the provisions of this chapter.

(2) An owner of land desiring that it be designated as forest land and valued under RCW 84.33.140 as of January 1st of any year shall submit an application to the assessor of the county in which the land is located before January 1st of that year. The application shall be accompanied by a reasonable processing fee when the county legislative authority has established the requirement for such a fee.

(3) No application of designation is required when publicly owned forest land is exchanged for privately owned forest land designated under this chapter. The land exchanged and received by an owner subject to ad valorem taxation shall be automatically granted designation under this chapter if the following conditions are met:

(a) The land will be used to grow and harvest timber; and

(b) The owner of the land submits a document to the assessor's office that explains the details of the forest land exchange within sixty days of the closing date of the exchange. However, if the owner fails to submit information regarding the exchange by the end of this sixty-day period, the owner must file an application for designation as forest land under this chapter and the regular application process will be followed.

(4) The application shall be made upon forms prepared by the department and supplied by the assessor, and shall include the following:

- (a) A legal description of, or assessor's parcel numbers for, all land the applicant desires to be designated as forest land;
 - (b) The date or dates of acquisition of the land;
 - (c) A brief description of the timber on the land, or if the timber has been harvested, the owner's plan for restocking;
 - (d) A copy of the timber management plan, if one exists, for the land prepared by a trained forester or any other person with adequate knowledge of timber management practices;
 - (e) If a timber management plan exists, an explanation of the nature and extent to which the management plan has been implemented;
 - (f) Whether the land is used for grazing;
 - (g) Whether the land has been subdivided or a plat has been filed with respect to the land;
 - (h) Whether the land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW;
 - (i) Whether the land is subject to forest fire protection assessments under RCW 76.04.610;
 - (j) Whether the land is subject to a lease, option, or other right that permits it to be used for any purpose other than growing and harvesting timber;
 - (k) A summary of the past experience and activity of the applicant in growing and harvesting timber;
 - (l) A summary of current and continuing activity of the applicant in growing and harvesting timber;
 - (m) A statement that the applicant is aware of the potential tax liability involved when the land ceases to be designated as forest land;
 - (n) An affirmation that the statements contained in the application are true and that the land described in the application meets the definition of forest land in RCW 84.33.035; and
 - (o) A description and/or drawing showing what areas of land for which designation is sought are used for incidental uses compatible with the definition of forest land in RCW 84.33.035.
- (5) The assessor shall afford the applicant an opportunity to be heard if the applicant so requests.
- (6) The assessor shall act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily being determinative, except that the application may be denied for one of the following reasons, without regard to other items:
- (a) The land does not contain (~~either~~) a "merchantable stand of timber" as defined in chapter 76.09 RCW and applicable rules. This reason shall not alone be sufficient to deny the application (i) if the land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or a longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within the land do not meet the minimum standards due to rock outcroppings, swamps, unproductive soil or other natural conditions;
 - (b) The applicant, with respect to the land, has failed to comply with a final administrative or judicial order with respect to a violation of the restocking,

forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line. However, if the assessor determines that a higher and better use exists for the land but this use would not be permitted or economically feasible by virtue of any federal, state, or local law or regulation, the land shall be assessed and valued under RCW 84.33.140 without being designated as forest land.

(7) The application shall be deemed to have been approved unless, prior to May 1st of the year after the application was mailed or delivered to the assessor, the assessor notifies the applicant in writing of the extent to which the application is denied.

(8) An owner who receives notice that his or her application has been denied, in whole or in part, may appeal the denial to the county board of equalization in accordance with the provisions of RCW 84.40.038.

Sec. 5. RCW 84.33.140 and 2001 c 305 s 2, 2001 c 249 s 3, and 2001 c 185 s 5 are each reenacted and amended to read as follows:

(1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation shall be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor shall list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor shall compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land shall be as follows:

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
1	1	\$234
	2	229
	3	217
	4	157
2	1	198
	2	190
	3	183
	4	132
3	1	154
	2	149
	3	148
	4	113

	1	117
4	2	114
	3	113
	4	86
	1	85
5	2	78
	3	77
	4	52
	1	43
6	2	39
	3	39
	4	37
	1	21
7	2	21
	3	20
	4	20
8		1

(3) On or before December 31, 2001, the department shall adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and shall certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section shall be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(5) Land graded, assessed, and valued as forest land shall continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of designation. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance ~~((of))~~ regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land shall not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting ~~((of))~~ timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions"

includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor shall have the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; or

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal shall apply only to the land affected. If land is removed from designation because of subsection (5)(d) of this section, the removal shall apply only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation shall immediately be made upon the assessment and tax rolls. The assessor shall revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation shall be listed. Taxes based on the value of the land as forest land shall be assessed and payable up until the date of removal and taxes based on the true and fair value of the land shall be assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax shall be imposed on land removed from designation as forest land. The compensating tax shall be due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor shall compute the amount of compensating tax and mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax shall be equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, shall become a lien on the land which shall attach at the time the land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section shall not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i) The sale or transfer of land after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993 and the sale or transfer takes place ~~((within two years))~~ after July 22, 2001, and on or before July 22, 2003, and the death of the owner occurred after January 1, 1991~~((or~~

~~(j) The date of death shown on a death certificate is the date used for the purpose of this subsection (13)).~~ The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(i).

(14) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (11) of this section shall not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner.

Sec. 6. RCW 84.34.108 and 2001 c 305 s 3, 2001 c 249 s 14, and 2001 c 185 s 7 are each reenacted and amended to read as follows:

(1) When land has once been classified under this chapter, a notation of the classification shall be made each year upon the assessment and tax rolls and the land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of the classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner shall not, by itself, result in removal of classification. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (4) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance ((of)) regarding classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of the land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, shall provide reasonable assistance to the assessor in making a determination whether the land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance shall be provided within thirty days of receipt of the request.

(2) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) Within thirty days after such removal of all or a portion of the land from current use classification, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(4) Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to its true and fair value on January 1st of the year of removal from classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, an additional tax, applicable interest, and penalty shall be imposed which shall be due and payable to the treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of additional tax, applicable interest, and penalty and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land", "farm and agricultural land", or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest shall be equal to the interest upon the amounts of the additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty shall be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty, shall become a lien on the land which shall attach at the time the land is removed from classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050 now or as hereafter amended. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) of this section shall not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section shall be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(e);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040;

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k); or

(l) The sale or transfer of land after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993 and the sale or transfer takes place ~~((within two years))~~ after July 22, 2001, and on or before July 22, 2003, and the death of the owner occurred after January 1, 1991~~((or~~

~~((m)))~~. The date of death shown on a death certificate is the date used for the purpose of this subsection (6)(l).

NEW SECTION. **Sec. 7.** RCW 84.33.120 (Forest land valuation—Assessor to list forest land at grade and class values—Computation of assessed value—Adjustment of values—Certification—Use—Notice of continuance—Appeals—Removal of classification—Compensating tax) and 2001 c 305 s 1,

2001 c 185 s 3, 1999 sp.s. c 4 s 702, 1999 c 233 s 20, 1997 c 299 s 1, 1995 c 330 s 1, 1992 c 69 s 1, 1986 c 238 s 1, 1984 c 204 s 23, 1981 c 148 s 7, 1980 c 134 s 2, 1974 ex.s. c 187 s 5, 1972 ex.s. c 148 s 5, & 1971 ex.s. c 294 s 12 are each repealed.

Passed by the House February 10, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 171

[Substitute Senate Bill 5105]

EDUCATIONAL INTERPRETERS

AN ACT Relating to educational interpreters; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that there is currently no requirement for educational interpreters for deaf and hard of hearing students to be certified or to meet standardized qualifications or competencies.

NEW SECTION. Sec. 2. By November 30, 2004, the office of the superintendent of public instruction, in consultation with educators, parents, organizations representing special education, organizations representing educational interpreters and the interests of deaf and hearing impaired children, and other interested parties, shall conduct a comprehensive review and analysis of the qualifications and competencies required of educational interpreters who assist deaf and hearing impaired students. The review shall include an analysis of all state and federal requirements for meeting the educational needs of deaf and hearing impaired students, including the requirement to provide educational interpreters, and shall identify all funding sources available to pay for those educational needs. The office shall make recommendations to the governor, appropriate legislative committees, and the state board of education on the following options:

(1) Requiring that all educational interpreters for deaf students and hard of hearing students meet national registry standards;

(2) Requiring the state board of education or the office of the superintendent of public instruction, as appropriate, to establish competencies for educational interpreters;

(3) Identifying state and national training programs that could prepare educational interpreters to meet and maintain any standards or competencies necessary to serve deaf and hearing impaired students;

(4) Studying the feasibility of using distance learning options as a way to both maintain the quality and increase the availability of educational interpreters;

(5) Requiring the office of the superintendent of public instruction, in cooperation with institutions of higher education that have a deaf studies program, to provide a training program for educational interpreters. The training program should be accessible to all areas of Washington through a combination of interactive video conferences, on-line courses, and traditional teaching methods; and

(6) Any other option that the office deems viable to increase and maintain the quality and availability of educational interpreters in a fiscally responsible manner.

Passed by the Senate April 21, 2003.
Passed by the House April 10, 2003.
Approved by the Governor May 9, 2003.
Filed in Office of Secretary of State May 9, 2003.

CHAPTER 172

[Substitute Senate Bill 5237]

SCHOOLS—STUDENT CATHETERIZATION

AN ACT Relating to regulating the catheterization of students; amending RCW 28A.210.280; and adding a new section to chapter 28A.210 RCW.

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

Sec. 1. RCW 28A.210.280 and 1994 sp.s. c 9 s 721 are each amended to read as follows:

(1) Public school districts and private schools that offer classes for any of grades kindergarten through twelve (~~may~~) must provide for clean, intermittent bladder catheterization of students, or assisted self-catheterization of students pursuant to RCW 18.79.290(~~(, if the catheterization is provided for)~~). The catheterization must be provided in substantial compliance with:

(a) Rules adopted by the state nursing care quality assurance commission and the instructions of a registered nurse or advanced registered nurse practitioner issued under such rules; and

(b) Written policies of the school district or private school which shall be adopted in order to implement this section and shall be developed in accordance with such requirements of chapters 41.56 and 41.59 RCW as may be applicable.

(2) (~~This section does not require school districts to provide intermittent bladder catheterization of students.~~) School district employees, except those licensed under chapter 18.79 RCW, who have not agreed in writing to perform clean, intermittent bladder catheterization as a specific part of their job description, may file a written letter of refusal to perform clean, intermittent bladder catheterization of students. This written letter of refusal may not serve as grounds for discharge, nonrenewal, or other action adversely affecting the employee's contract status.

(3) Any public school district or private school that provides clean, intermittent bladder catheterization shall document the provision of training given to employees who perform these services. These records shall be made available for review at any audit.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.210 RCW to read as follows:

Any employee of a public school district or private school that performs health services, such as catheterization, must have a job description that lists all of the health services that the employee may be required to perform for students.

Passed by the Senate April 21, 2003.
Passed by the House April 8, 2003.
Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 173

[Substitute Senate Bill 5062]

RECREATIONAL FISHERIES ENHANCEMENT OVERSIGHT COMMITTEE

AN ACT Relating to the recreational salmon and marine fish enhancement program; amending RCW 77.105.010 and 77.105.150; and adding a new section to chapter 77.105 RCW.

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

Sec. 1. RCW 77.105.010 and 1998 c 245 s 157 are each amended to read as follows:

There is created within the department of fish and wildlife the Puget Sound recreational salmon and marine fish enhancement program. The department of fish and wildlife shall identify a coordinator for the program who shall act as spokesperson for the program and shall:

(1) Coordinate the activities of the Puget Sound recreational salmon and marine fish enhancement program, including the Lake Washington salmon fishery; and

(2) Work within and outside of the department to achieve the goals stated in this chapter, including coordinating with the Puget Sound recreational fisheries enhancement oversight committee established in section 2 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 77.105 RCW to read as follows:

(1) The Puget Sound recreational fisheries enhancement oversight committee is created. The director shall appoint at least seven members representing sport fishing organizations to the committee from a list of applicants, ensuring broad representation from the sport fishing community. Each member shall serve for a term of two years, and may be reappointed for subsequent two-year terms at the discretion of the director. Members of the committee serve without compensation.

(2) The Puget Sound recreational fisheries enhancement oversight committee has the following duties:

(a) Advise the department on all aspects of the Puget Sound recreational fisheries enhancement program;

(b) Review and provide guidance on the annual budget for the recreational fisheries enhancement account;

(c) Select a chair of the committee. It is the chair's duty to coordinate with the department on all issues related to the Puget Sound recreational fisheries enhancement program;

(d) Meet at least quarterly with the department's coordinator of the Puget Sound recreational fisheries enhancement program;

(e) Review and comment on program documents and proposed production of salmon and other species; and

(f) Address other issues related to the purposes of the Puget Sound recreational fisheries enhancement program that are of interest to recreational fishers in Puget Sound.

Sec. 3. RCW 77.105.150 and 2000 c 107 s 120 are each amended to read as follows:

The recreational fisheries enhancement account is created in the state treasury. All receipts from RCW 77.105.140 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 identified in this chapter. Under no circumstances may moneys from the account be used to backfill shortfalls in other state funding sources.

Passed by the Senate March 17, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 174

[Second Substitute House Bill 1887]

COMMERCIAL FISHING

AN ACT Relating to commercial fisheries; amending RCW 77.70.280; adding new sections to chapter 77.70 RCW; repealing RCW 77.70.380; and providing a contingent expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 77.70 RCW to read as follows:

The commercial fisheries buyback account is created in the custody of the state treasurer. All receipts from money collected by the commission under section 2 of this act, moneys appropriated for the purposes of this section, and other gifts, grants, or donations specifically made to the fund must be deposited into the account. Expenditures from the account may be used only for the purpose of repaying moneys advanced by the federal government under a groundfish fleet reduction program established by the federal government, or for other fleet reduction efforts, commercial fishing license buyback programs, or similar programs designed to reduce the harvest capacity in a commercial fishery. Only the director of the department 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.

NEW SECTION. Sec. 2. A new section is added to chapter 77.70 RCW to read as follows:

(1) The commission shall collect a fee upon all deliveries of fish or shellfish from persons holding: (a) A federal pacific groundfish limited entry permit with a trawl endorsement; (b) an ocean pink shrimp delivery license issued under RCW 77.65.390; (c) a Dungeness crab--coastal fishery license issued under RCW 77.70.280; (d) a food fish delivery license issued under RCW 77.65.200; or (e) a shrimp trawl license under RCW 77.65.220, to repay the federal government for moneys advanced by the federal government under a groundfish fleet reduction program established by the federal government.

(2) The commission shall adopt a fee schedule by rule for the collection of the fee required by subsection (1) of this section. The fee schedule adopted shall limit the total amount of moneys collected through the fee to the minimum amount necessary to repay the moneys advanced by the federal government, but be sufficient to repay the debt obligation of each fishery. The fee charged to the

holders of a Dungeness crab--coastal fishery license may not exceed two percent of the total ex-vessel value of annual landings, and the fee charged to all other eligible license holders may not exceed five percent of the total ex-vessel value of annual landings. The commission may adjust the fee schedule as necessary to ensure that the funds collected are adequate to repay the debt obligation of each fishery.

(3) The commission shall deposit moneys collected under this section in the commercial fisheries buyback account created in section 1 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 77.70 RCW to read as follows:

The commission may not assess the fee specified under section 2 of this act until after the federal government creates a groundfish fleet reduction program.

NEW SECTION. Sec. 4. A new section is added to chapter 77.70 RCW to read as follows:

Sections 2 and 3 of this act expire January 1, 2033, or when the groundfish fleet reduction program referenced in section 2 of this act is completed, whichever is sooner.

Sec. 5. RCW 77.70.280 and 2000 c 107 s 76 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 subsections (3) and (8) 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 77.65.220(1)(b);

(ii) Nonsalmon delivery license, issued under RCW 77.65.210;

(iii) Salmon troll license, issued under RCW 77.65.160;

(iv) Salmon delivery license, issued under RCW 77.65.170;

(v) Food fish trawl license, issued under RCW 77.65.200; or

(vi) Shrimp trawl license, issued under RCW 77.65.220; 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 77.70.030. 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 77.70.340, "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.

(8) A Dungeness crab—coastal fishery license may not be issued to a person who participates in the federal fleet reduction program created in section 2 of this act within ten years of that person's participation in the federal program, if reciprocal restrictions are imposed by the states of Oregon and California on persons participating in the federal fleet reduction program.

NEW SECTION. Sec. 6. RCW 77.70.380 (Dungeness crab-coastal fishery licenses—Criteria for issuing new licenses) and 2000 c 107 s 82 & 1994 c 260 s 17 are each repealed.

Passed by the House March 13, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 175

[House Bill 1144]

FISH AND WILDLIFE—CONTROLLED SUBSTANCES

AN ACT Relating to the use of controlled substances by the department of fish and wildlife; adding a new section to chapter 69.50 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that the department of fish and wildlife is responsible for the proper management of the state's diverse wildlife resources. Wildlife management often requires the department of fish and wildlife to immobilize individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes. The legislature finds that it is often necessary for the department to use certain controlled substances to accomplish these purposes. Therefore, the legislature finds that the department of fish and wildlife, in coordination with the board of pharmacy, must be enabled to use approved controlled substances in order to accomplish its legitimate wildlife management goals.

NEW SECTION. Sec. 2. A new section is added to chapter 69.50 RCW to read as follows:

The department of fish and wildlife may apply to the department of health for registration pursuant to the applicable provisions of this chapter to purchase, possess, and administer controlled substances for use in chemical capture programs. The department of fish and wildlife must not permit a person to administer controlled substances unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The department of health may issue a limited registration to carry out the provisions of this section. The board may adopt rules to ensure strict compliance with the provisions of this section. The board, in consultation with the department of fish and wildlife, must by rule add or remove additional controlled substances for use in chemical capture programs. The board shall suspend or revoke registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge as required by this section. This authority is granted in addition to any other power to suspend or revoke registration as provided by law.

Passed by the House April 21, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 176

[House Bill 1246]

AQUATIC LAND BASE—GIFTS

AN ACT Relating to authorization to accept gifts of aquatic land; and adding a new section to chapter 79.90 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 79.90 RCW to read as follows:

(1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.90.455, the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after the effective date of this section, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board of natural resources before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to the effective date of this section.

Passed by the House February 10, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 9, 2003.
 Filed in Office of Secretary of State May 9, 2003.

CHAPTER 177

[Substitute House Bill 1074]

MOTOR VEHICLE IMPOUNDS—COMMERCIAL VEHICLES

AN ACT Relating to release of vehicles to vehicle owners in cases involving suspended license vehicle impounds; and amending RCW 46.55.113 and 46.55.120.

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

Sec. 1. RCW 46.55.113 and 1998 c 203 s 4 are each amended to read as follows:

(1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 or of RCW 46.20.342 or ~~((46.20.420))~~ 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

~~((1))~~ (a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

~~((2))~~ (b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

~~((3))~~ (c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

~~((4))~~ (d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

~~((5))~~ (e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

~~((6))~~ (f) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

~~((7))~~ (g) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the

time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

Sec. 2. RCW 46.55.120 and 2000 c 193 s 1 are each amended to read as follows:

(1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency may issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (a)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the

vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(b) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(c) Notwithstanding (b) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(d) Notwithstanding (b) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter ((62A-9)) 62A.9A RCW, including providing redemption rights to the debtor under RCW ((62A-9-506)) 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter ((62A-9)) 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on

an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(e) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (b) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section and more than five days before the date of the auction. At the time of the filing of the

hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the

defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$., in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.

DATED this day of, (year) . . .

Signature

Typed name and address
of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees.

Passed by the House March 3, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 178

[House Bill 1088]

MOTOR VEHICLES—ILLEGAL PARKING

AN ACT Relating to removal of illegally parked vehicles; and amending RCW 46.55.113.

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

Sec. 1. RCW 46.55.113 and 1998 c 203 s 4 are each amended to read as follows:

Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 ~~((or)), 46.61.504 ((or of RCW)), 46.20.342, or ((46.20.420)) 46.20.345~~, the vehicle is subject to impoundment, pursuant to applicable local ordinance or state agency rule at the direction of a law enforcement officer. In addition, a police officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:

(1) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(2) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(3) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(5) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(7) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more;

(8) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone.

Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

Passed by the House April 21, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 179

[Engrossed House Bill 1427]

EVIDENCE—CONFESSIONS

AN ACT Relating to the admissibility of confessions and admissions in criminal and juvenile offense proceedings; and adding a new section to chapter 10.58 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 10.58 RCW to read as follows:

(1) In criminal and juvenile offense proceedings where independent proof of the corpus delicti is absent, and the alleged victim of the crime is dead or incompetent to testify, a lawfully obtained and otherwise admissible confession,

admission, or other statement of the defendant shall be admissible into evidence if there is substantial independent evidence that would tend to establish the trustworthiness of the confession, admission, or other statement of the defendant.

(2) In determining whether there is substantial independent evidence that the confession, admission, or other statement of the defendant is trustworthy, the court shall consider, but is not limited to:

(a) Whether there is any evidence corroborating or contradicting the facts set out in the statement, including the elements of the offense;

(b) The character of the witness reporting the statement and the number of witnesses to the statement;

(c) Whether a record of the statement was made and the timing of the making of the record in relation to the making of the statement; and/or

(d) The relationship between the witness and the defendant.

(3) Where the court finds that the confession, admission, or other statement of the defendant is sufficiently trustworthy to be admitted, the court shall issue a written order setting forth the rationale for admission.

(4) Nothing in this section may be construed to prevent the defendant from arguing to the jury or judge in a bench trial that the statement is not trustworthy or that the evidence is otherwise insufficient to convict.

Passed by the House March 17, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 180

[Substitute Senate Bill 5133]

INTERSTATE COMPACT FOR JUVENILES

AN ACT Relating to the interstate compact for juveniles; adding new sections to chapter 13.24 RCW; repealing RCW 13.24.010 and 13.24.020; and providing a contingent effective date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 13.24 RCW to read as follows:

EXECUTION OF THE COMPACT

The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows. No provision of this compact will interfere with this state's authority to determine policy regarding juvenile offenders and nonoffenders within this state.

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I - Purpose

The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have

endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to: (1) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (2) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (3) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return; (4) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (5) provide for the effective tracking and supervision of juveniles; (6) equitably allocate the costs, benefits, and obligations of the compacting states; (7) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders; (8) ensure immediate notice to jurisdictions where defined offenders may travel or relocate across state lines; (9) establish procedures to resolve pending charges (detainers) against juvenile offenders before transfer or release to the community under the terms of this compact; (10) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (11) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (12) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (13) coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the interstate commission created in this section are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II - Definitions

As used in this compact, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

(2) "Commissioner" means the voting representative of each compacting state appointed under Article III of this compact.

(3) "Compact administrator" means the individual in each compacting state appointed under the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator under the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(7) "Interstate commission" means the interstate commission for juveniles created by Article III of this compact.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(a) An accused delinquent, meaning a person charged with an offense that, if committed by an adult, would be a criminal offense;

(b) An adjudicated delinquent, meaning a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(c) An accused status offender, meaning a person charged with an offense that would not be a criminal offense if committed by an adult;

(d) An adjudicated status offender, meaning a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(e) A nonoffender, meaning a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(9) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(10) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(11) "Rule" means a written statement by the interstate commission issued under Article VI of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the commission, and has

the force and effect of statutory law in a compacting state. This includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III - Interstate Commission for Juveniles

(1) The compacting states hereby create the "interstate commission for juveniles." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth in this section, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state under the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the interstate commission in such capacity under the applicable law of the compacting state.

(3) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be nonvoting members. The interstate commission may provide in its bylaws for such additional nonvoting members, including members of other national organizations, in such numbers as shall be determined by the commission.

(4) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(5) The interstate commission shall meet at least once each calendar year. The chair may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(6) The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the

administration of the compact managed by an executive director and interstate commission staff, administer enforcement and compliance with the compact, its bylaws, and rules, and perform such other duties as directed by the interstate commission or set forth in the bylaws.

(7) Each member of the interstate commission may cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(8) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(9) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(a) Relate solely to the interstate commission's internal personnel practices and procedures;

(b) Disclose matters specifically exempted from disclosure by statute;

(c) Disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) Involve accusing any person of a crime, or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigative records compiled for law enforcement purposes;

(g) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

(h) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(i) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(10) For every closed meeting, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary

of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in the minutes.

(11) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules that specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to current technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV - Powers and Duties of the Interstate Commission

The commission has the following powers and duties:

- (1) Provide for dispute resolution among compacting states;
- (2) Adopt rules to effect the purposes and obligations of this compact which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
- (3) Oversee, supervise, and coordinate the interstate movement of juveniles subject to this compact and any bylaws adopted and rules adopted by the interstate commission;
- (4) Enforce compliance with the compact provisions, the rules adopted by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
- (5) Establish and maintain offices that are located within one or more of the compacting states;
- (6) Purchase and maintain insurance and bonds;
- (7) Borrow, accept, hire, or contract for personnel services;
- (8) Establish and appoint committees and hire staff that it deems necessary to carry out its functions including, but not limited to, an executive committee as required by Article III of this compact that may act on behalf of the interstate commission in carrying out its powers and duties;
- (9) Elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications, and to establish the interstate commission's personnel policies and programs relating to inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) Accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of the donations and grants;
- (11) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) Establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;
- (14) Sue and be sued;

(15) Adopt a seal and bylaws governing the management and operation of the interstate commission;

(16) Perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(17) Report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Reports shall also include any recommendations adopted by the interstate commission;

(18) Coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity;

(19) Establish uniform standards of the reporting, collecting, and exchanging of data; and

(20) Maintain its corporate books and records in accordance with the bylaws.

ARTICLE V - Organization and Operation of the Interstate Commission

Section A. Bylaws

The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary;

(3) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;

(4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(5) Establishing the titles and responsibilities of the officers of the interstate commission;

(6) Providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing "start-up" rules for initial administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and staff

(1) The interstate commission shall, by a majority of the members, elect annually from among its members a chair and a vice-chair, each of whom has the authority and duties that are specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or

remuneration from the interstate commission. However, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the interstate commission deems appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member and shall hire and supervise such other staff as authorized by the interstate commission.

Section C. Qualified immunity, defense, and indemnification

(1) The commission's executive director and employees are immune from suit and liability, either personally or in their official capacity, for any claim for damage to, loss of property, personal injury, or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, any such person is not protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such

persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI - Rule-making Functions of the Interstate Commission

(1) The interstate commission shall adopt and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(2) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the "model state administrative procedures act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States supreme court. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the commission.

(3) When adopting a rule, the interstate commission shall, at a minimum:

(a) Publish the proposed rule's entire text stating the reason or reasons for that proposed rule;

(b) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available;

(c) Provide an opportunity for an informal hearing if petitioned by ten or more persons; and

(d) Adopt a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(4) The interstate commission shall allow, not later than sixty days after a rule is adopted, any interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the model state administrative procedures act.

(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that rule to have no further force and effect in any compacting state.

(6) The existing rules governing the operation of the interstate compact on juveniles superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created under this section.

(7) Upon determination by the interstate commission that a state of emergency exists, it may adopt an emergency rule that becomes effective immediately upon adoption. However, the usual rule-making procedures shall

be retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

ARTICLE VII - Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

Section A. Oversight

(1) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules adopted under this section shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute resolution

(1) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the compact and its bylaws and rules.

(2) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII - Finance

(1) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as

approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall adopt a rule binding upon all compacting states that governs the assessment.

(3) The interstate commission shall not incur any obligations of any kind before securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE IX - The State Council

Each member state shall create a state council for interstate juvenile supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

Pursuant to this compact, the governor shall designate an individual who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The governor shall designate the compact administrator from a list of six individuals, three of whom are recommended by the Washington association of juvenile court administrators and three of whom are recommended by the juvenile rehabilitation administration of the department of social and health services. The administrator shall serve subject to the pleasure of the governor. The administrator shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state.

ARTICLE X - Compacting States, Effective Date, and Amendment

(1) Any state, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and

the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states and territories of the United States.

(3) The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI - Withdrawal, Default, Termination, and Judicial Enforcement

Section A. Withdrawal

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state. However, a compacting state may withdraw from the compact by repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chair of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Technical Assistance, Fines, Suspension, Termination, and Default

(1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or adopted rules, the interstate commission may impose any or all of the following penalties:

(a) Remedial training and technical assistance as directed by the interstate commission;

(b) Alternative dispute resolution;

(c) Fines, fees, and costs in such amounts as set by the interstate commission; and

(d) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or rules and any other grounds designated in commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial enforcement

The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its rules, and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

Section D. Dissolution of compact

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII - Severability and Construction

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII - Binding Effect of Compact and Other Laws

Section A. Other laws

(1) Nothing in this section prevents the enforcement of any other law of a compacting state that is consistent with this compact.

(2) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding effect of the compact

(1) All lawful actions of the interstate commission, including all rules and bylaws adopted by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

NEW SECTION. Sec. 2. A new section is added to chapter 13.24 RCW to read as follows:

Pursuant to the compact created in section 1 of this act, the governor is hereby authorized and empowered to designate a state council as required in Article IX of the compact.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

- (1) RCW 13.24.010 (Execution of compact) and 1955 c 284 s 1; and
- (2) RCW 13.24.020 (Juvenile compact administrator) and 1955 c 284 s 2.

NEW SECTION. Sec. 4. This act takes effect July 1, 2004, or when the interstate compact for juveniles is adopted by thirty-five or more states, whichever occurs later.

Passed by the Senate April 21, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 181

[House Bill 1289]

FISHING LICENSES—MILITARY EXEMPTION

AN ACT Relating to exempting active duty military personnel from certain temporary fishing license restrictions; amending RCW 77.32.470; and declaring an emergency.

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

Sec. 1. RCW 77.32.470 and 1998 c 191 s 16 are each amended to read as follows:

(1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is thirty-six dollars for residents, seventy-two dollars for nonresidents, and five dollars for youth.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is eighteen dollars for residents, thirty-six dollars for nonresidents, and five dollars for resident seniors.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty dollars for residents, forty dollars for nonresidents, and five dollars for resident seniors.

(3) A temporary fishing license is valid for two consecutive days and allows the holder to fish for or possess fish taken from state waters or offshore waters. The fee for this temporary fishing license is six dollars for both residents and nonresidents. Except for active duty military personnel serving in any branch of the United States armed forces, this license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two residents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination.

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 by the House April 21, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 182

[Substitute Senate Bill 5006]

NONCONSUMPTIVE WILDLIFE ACTIVITIES

AN ACT Relating to nonconsumptive wildlife activities; and amending RCW 79.01.244 and 79.68.050.

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

Sec. 1. RCW 79.01.244 and 1979 ex.s. c 109 s 9 are each amended to read as follows:

All state lands hereafter leased for grazing or agricultural purposes shall be open and available to the public for purposes of hunting and fishing, and for nonconsumptive wildlife activities, as defined by the board of natural resources, unless closed to public entry because of fire hazard or unless the department of natural resources gives prior written approval and the area is lawfully posted by lessee to prohibit hunting and fishing, and nonconsumptive wildlife activities, thereon in order to prevent damage to crops or other land cover, to improvements on the land, to livestock, to the lessee, or to the general public, or closure is necessary to avoid undue interference with carrying forward a departmental or agency program. In the event any such lands are so posted it shall be unlawful for any person to hunt or fish, or pursue nonconsumptive wildlife activities, on any such posted lands. Such lands shall not be open and available for wildlife activities when access could endanger crops on the land or when access could endanger the person accessing the land.

The department of natural resources shall insert the provisions of this section in all grazing and agricultural leases hereafter issued.

Sec. 2. RCW 79.68.050 and 1971 ex.s. c 234 s 5 are each amended to read as follows:

Multiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to:

- (1) Recreational areas;

- (2) Recreational trails for both vehicular and nonvehicular uses;
- (3) Special educational or scientific studies;
- (4) Experimental programs by the various public agencies;
- (5) Special events;
- (6) Hunting and fishing and other sports activities;
- (7) Nonconsumptive wildlife activities as defined by the board of natural resources;

- ~~(8)~~ Maintenance of scenic areas;
- ~~((8))~~ (9) Maintenance of historical sites;
- ~~((9))~~ (10) Municipal or other public watershed protection;
- ~~((10))~~ (11) Greenbelt areas;
- ~~((11))~~ (12) Public rights of way;
- ~~((12))~~ (13) Other uses or activities by public agencies;

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations.

Passed by the Senate March 7, 2003.
 Passed by the House April 10, 2003.
 Approved by the Governor May 9, 2003.
 Filed in Office of Secretary of State May 9, 2003.

CHAPTER 183

[Senate Bill 5011]

TOURISM—WILDLIFE VIEWING

AN ACT Relating to promoting wildlife viewing; adding a new section to chapter 77.12 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 77.12 RCW to read as follows:

The department shall manage wildlife programs in a manner that provides for public opportunities to view wildlife and supports wildlife viewing tourism without impairing the state’s wildlife resources.

NEW SECTION. Sec. 2. (1) The departments of fish and wildlife and community, trade, and economic development shall host a working conference on promoting wildlife viewing tourism. The objective of the conference shall be to adopt a strategic plan and specific implementing actions to promote wildlife viewing tourism in Washington in a manner that both provides sustainable economic development in the state’s rural areas and supports maintaining the state’s wildlife diversity.

(2) The departments shall work with interested local governments, state agencies, visitor and convention bureaus, the hospitality industry, tourism development organizations, and tour operators and wildlife conservation organizations in preparing for and conducting the conference. The departments shall guide preparation for the conference by surveying programs and activities in other states and compiling information on current programs, infrastructure, and promotional activities regarding wildlife viewing tourism in Washington. To enhance the effectiveness of the conference and its products, the departments

shall seek to frame issues and outline options for improvement through white papers and preliminary meetings with interest groups.

(3) Among the topics that the departments and interest groups should address at the conference are:

(a) Strategies to increase revenues and benefits to Washington communities with wildlife viewing resources that have identified tourism as part of their economic development strategy;

(b) Strengthening the wildlife viewing tourism elements of gateway community partnerships among state and local transportation, economic development, and parks and wildlife agencies;

(c) Providing leadership and services by state agencies to assist local communities to assess their local wildlife viewing resources and to market tourism centered upon such resources;

(d) Developing proposals to increase state funding to local communities to implement local wildlife viewing tourism plans, including assessing resources, providing infrastructure specific to wildlife viewing tourism, festival development, and marketing; and

(e) Promoting wildlife viewing tourism as an element of tourism related to the Lewis and Clark bicentennial commemoration.

(4) The departments shall schedule the conference at a time sufficient to prepare a summary of the conference proceedings and proposals for legislative funding to be submitted to the appropriate committees of the legislature no later than December 15, 2003.

Passed by the Senate April 21, 2003.

Passed by the House April 9, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 184

[Substitute House Bill 1136]

OUTDOOR RECREATION ACCOUNT

AN ACT Relating to implementing the recommendations of the state parks and outdoor recreation funding task force relating to the use of the outdoor recreation account; and amending RCW 79A.15.050.

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

Sec. 1. RCW 79A.15.050 and 1999 c 379 s 941 are each amended to read as follows:

(1) Moneys appropriated for this chapter to the outdoor recreation account shall be distributed in the following way:

(a) Not less than twenty-five percent to the state parks and recreation commission for the acquisition and development of state parks, with at least seventy-five percent of this money for acquisition costs. However, ~~((during the 1999-2001 biennium, distributions for acquisition and development of state parks shall not exceed four million two hundred fifty thousand dollars, and the proportion for acquisition costs shall be determined by the commission))~~ between the effective date of this act and June 30, 2009, at least fifty percent of this money for the acquisition and development of state parks must be used for acquisition costs;

(b) Not less than twenty-five percent for the acquisition, development, and renovation of local parks, with at least fifty percent of this money for acquisition costs;

(c) Not less than fifteen percent for the acquisition and development of trails;

(d) Not less than ten percent for the acquisition and development of water access sites, with at least seventy-five percent of this money for acquisition costs; and

(e) The remaining amount shall be considered unallocated and shall be distributed by the committee to state and local agencies to fund high priority acquisition and development needs for parks, trails, and water access sites.

(2) In distributing these funds, the committee retains discretion to meet the most pressing needs for state and local parks, trails, and water access sites, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(3) Only local agencies may apply for acquisition, development, or renovation funds for local parks under subsection (1)(b) of this section.

(4) State and local agencies may apply for funds for trails under subsection (1)(c) of this section.

(5) State and local agencies may apply for funds for water access sites under subsection (1)(d) of this section.

Passed by the House March 11, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 185

[Second Substitute House Bill 1698]

NONHIGHWAY AND OFF-ROAD VEHICLE ADVISORY COMMITTEE

AN ACT Relating to outdoor recreation programs; amending RCW 46.09.280; and creating a new section.

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

Sec. 1. RCW 46.09.280 and 1986 c 206 s 13 are each amended to read as follows:

The interagency committee for outdoor recreation shall establish (~~a committee of nonhighway road recreationists, including representatives of organized ORV groups;~~) the nonhighway and off-road vehicle advisory committee to provide advice regarding the administration of this chapter. The nonhighway and off-road vehicle advisory committee consists of a proportional representation of persons with recreational experience in areas identified in the most recent fuel use study, including but not limited to people with off-road vehicle, hiking, equestrian, mountain biking, hunting, fishing, and wildlife viewing experience. Only representatives of organized ORV groups may be voting members of the committee with respect to expenditure of funds received under RCW 46.09.110.

NEW SECTION. Sec. 2. The nonhighway and off-road vehicle advisory committee created in RCW 46.09.280 must review the existing nonhighway and

off-road vehicle distribution formulas and policies in RCW 46.09.020, 46.09.170, and 46.09.280 and develop recommendations for statutory changes. The recommendations should be consistent with the results of the most recent fuel use study, and address the operation and maintenance needs of existing facilities. For the review in this section, the committee must also include representation of county sheriffs, recreational land managers, the state parks and recreation commission, the department of fish and wildlife, and the department of natural resources, and two members of the senate appointed by the president of the senate, to include one member from each major caucus, and two members of the house of representatives appointed by the speaker of the house of representatives, to include one member from each major caucus. In the senate, members must be selected from the parks, fish and wildlife committee and ways and means committee. In the house of representatives, members must be selected from the fisheries, ecology and parks committee and either the appropriations or capital budget committee. Recommendations must be submitted to the appropriate standing committees of the legislature by January 1, 2004.

Passed by the House April 22, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 186

[House Bill 1993]

PARK LAND—LEASING

AN ACT Relating to increasing the term for leasing in undeveloped parks or parkway land; and amending RCW 79A.05.070.

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

Sec. 1. RCW 79A.05.070 and 1999 c 249 s 307 are each amended to read as follows:

The commission may:

- (1) Make rules and regulations for the proper administration of its duties;
- (2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money to contribute gifts, grants, and support to the commission for the purposes of this chapter. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in furtherance of its purposes to benefit the commission as provided in this chapter. The agency and the private nonprofit group shall agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any such gifts may be in the form of recreational facilities developed or built in part

or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;

(3) Require certification by the commission of all parks and recreation workers employed in state aided or state controlled programs;

(4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;

(5) Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify;

(6) Charge such fees for services, utilities, and use of facilities as the commission shall deem proper;

(7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such terms and conditions as the commission shall deem proper, for a term not to exceed ~~((ten))~~ forty years;

(8) Determine the qualifications of and employ a director of parks and recreation who shall receive a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and

(9) Without being limited to the powers hereinbefore enumerated, the commission shall have such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter: PROVIDED, That the commission shall not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose.

Passed by the House March 12, 2003.
Passed by the Senate April 11, 2003.
Approved by the Governor May 9, 2003.
Filed in Office of Secretary of State May 9, 2003.

CHAPTER 187

[House Bill 1102]

ENVIRONMENTAL MITIGATION SITES

AN ACT Relating to exchange agreements for environmental mitigation sites; and amending RCW 47.12.370.

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

Sec. 1. RCW 47.12.370 and 2002 c 188 s 1 are each amended to read as follows:

(1) The department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit ~~((groups incorporated in this state that are organized for environmental conservation purposes))~~ nature conservancy corporations as defined in RCW 64.04.130, to convey properties under the jurisdiction of the department that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future

maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.

(2) Tribal governments shall only be eligible to participate in an exchange agreement if they:

(a) Provide the department with a valid waiver of their tribal sovereign immunity from suit. The waiver must allow the department to enforce the terms of the exchange agreement or quitclaim deed in state court; and

(b) Agree that the property shall not be placed into trust status.

(3) The conveyances must be by quitclaim deed, or other form of conveyance, executed by the secretary of transportation, and must expressly restrict the use of the property to a mitigation site consistent with preservation of the functions and values of the site, and must provide for the automatic reversion to the department if the property is not used as a mitigation site or is not maintained in a manner that complies with applicable permits, laws, and regulations pertaining to the maintenance and operation of the mitigation site.

Passed by the House April 21, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 188

[Senate Bill 5959]

PERSONAL WIRELESS FACILITIES—HIGHWAY ACCESS

AN ACT Relating to allowing approaches to partially controlled limited access highways for the deployment of personal wireless facilities; amending RCW 47.52.001; and adding a new section to chapter 47.52 RCW.

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

**Sec. 1. RCW 47.52.001 and 1961 c 13 s 47.52.001 are each amended to read as follows:*

(1) Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed.

(2) Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

(3) It is, therefore, the declared policy of this state to limit access to the highway facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities; however, approaches to partially controlled limited access highways shall be permitted for the deployment of personal wireless facilities.

*Sec. 1 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 47.52 RCW to read as follows:

(1) The department shall authorize an off and on approach to partially controlled limited access highways for the placement and service of facilities providing personal wireless services.

(a) The approach shall be in a legal manner not to exceed thirty feet in width.

(b) The approach may be specified at a point satisfactory to the department at or between designated highway stations.

(c) The permit holder may use the approach for ingress and egress from the highway for construction or maintenance of the personal wireless service facility during nonpeak traffic hours so long as public safety is not adversely affected. The permit holder may use the approach for ingress and egress at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods.

(2) The department shall authorize the approach by an annual permit, which may only be canceled upon one hundred eighty days' written notice to the permit holder.

(a) The department shall set the yearly cost of a permit in rule.

(b) The permit shall be assignable to the contractors and subcontractors of the permit holder. The permit shall also be transferable to a new owner following the sale or merger of the permit holder.

(3) For the purposes of this section:

(a) "Personal wireless services" means any federally licensed personal wireless service.

(b) "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures.

(4) The department shall present a report to the house of representatives technology, telecommunications, and energy committee and the senate technology and communications committee on the implementation of the permit process and the cost of permits by January 15, 2004, and by the first day of the legislative session following adoption of any rule increasing the cost of permits.

Passed by the Senate April 22, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 9, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 9, 2003.

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

"I am returning herewith, without my approval as to Section 1, Senate Bill No. 5959, entitled:

"AN ACT Relating to allowing approaches to partially controlled limited access highways for the deployment of personal wireless facilities"

This bill establishes procedures for the Department of Transportation to permit wireless telecommunications facilities to be located along partially controlled limited access highways. This is important legislation that will help expand telecommunications services to underserved areas in our state and promote economic development.

However, Section 1 of this bill would have amended RCW 47.52.001, which is a declaration of state policy to limit access to the highway facilities of the state in the interest of highway safety and for the

preservation of the investment of the public in such facilities. The amendment would have created an inflexible exception to this longstanding policy by stating that personal wireless facilities "shall be permitted" along partially controlled limited access highways, apparently without qualification. Insofar as this section can be read to suggest that deployment of personal wireless facilities is consistent with the state's interest in highway safety, and that telecommunications deployment should take precedence over it, I am compelled to veto it.

I agree with the Legislature that personal wireless service is a critical part of the state's infrastructure, and I believe that Department of Transportation policy should acknowledge this. However, state policy should also ensure that telecommunications deployment be achieved along state highways without adversely affecting highway safety. For this reason, I believe the current language in RCW 47.52.001, which "limits" but by no means prohibits access to public highways, is the better statement of policy than that contained in Section 1.

For these reasons, I have vetoed Section 1 of Senate Bill No. 5959.

With the exception of Section 1, Senate Bill No. 5959 is approved."

CHAPTER 189

[Engrossed Substitute Senate Bill 5299]
TELECOMMUNICATIONS—TARIFFS

AN ACT Relating to tariff and price list notices; and amending RCW 80.04.130, 80.36.110, 80.36.320, and 80.36.330.

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

Sec. 1. RCW 80.04.130 and 2001 c 267 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, whenever any public service company shall file with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, charge, rental, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof(~~(, and)~~). Pending such hearing and the decision thereon, the commission may suspend the operation of such rate, charge, rental, or toll for a period not exceeding ten months from the time the same would otherwise go into effect(~~(, and)~~). After a full hearing, the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective.

(2)(a) The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year.

(i) The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company.

(ii) The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes

based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

~~((For the purposes of this section, tariffs for the following telecommunications services, that temporarily waive or reduce charges for existing or new subscribers for a period not to exceed sixty days in order to promote the use of the services shall be considered tariffs that decrease rates, charges, rentals, or tolls:~~

- ~~(a) Custom calling service;~~
- ~~(b) Second access lines; or~~
- ~~(c) Other services the commission specifies by rule.~~

~~The commission may suspend any promotional tariff other than those listed in (a) through (c) of this subsection.))~~

(b) The commission shall not suspend a promotional tariff. For the purposes of this section, "promotional tariff" means a tariff that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service.

(3) The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

~~((2))~~ (4) At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

~~((3))~~ (5) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing a price list, nor shall it accept for filing or approve, prior to June 1, 2004, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing a price list or it may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

~~((4))~~ (6) The implementation of Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service.

~~((5))~~ (7) If a utility claims a sales or use tax exemption on the pollution control equipment for an electrical generation facility and abandons the generation facility before the pollution control equipment is fully depreciated, any tariff filing for a rate increase to recover abandonment costs for the pollution

control equipment shall be considered unjust and unreasonable for the purposes of this section.

Sec. 2. RCW 80.36.110 and 1997 c 166 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, unless the commission otherwise orders, no change shall be made in any rate, toll, rental, or charge, that was filed and published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after notice as required in this subsection.

(a) For changes to any rate, toll, rental, or charge filed and published in a tariff, the company shall provide thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100((-which)). The notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later.

(b) For changes to any rate, toll, rental, or charge filed and published in a price list, the company shall provide ten days' notice to the commission and customers. The commission shall prescribe the form of notice.

(c) The commission for good cause shown may allow changes in rates, charges, tolls, or rentals without requiring the ((thirty days)) notice and publication provided for in (a) or (b) of this subsection, by an order or rule specifying the change to be made and the time when it takes effect, and the manner in which the change will be filed and published.

(d) When any change is made in any rate, toll, rental, or charge, the effect of which is to increase any rate, toll, rental, or charge then existing, attention shall be directed on the copy filed with the commission to the increase by some character immediately preceding or following the item in the schedule, which character shall be in such a form as the commission may designate.

(2)(a) A telecommunications company may file a tariff that decreases any rate, charge, rental, or toll with ten days' notice to the commission and publication without receiving a special order from the commission when the filing does not contain an offsetting increase to another rate, charge, rental, or toll, and the filing company agrees not to file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year.

(b) A telecommunications company may file a promotional offering to be effective, without receiving a special order from the commission, upon filing with the commission and publication. For the purposes of this section, "promotional offering" means a tariff or price list that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service.

Sec. 3. RCW 80.36.320 and 1998 c 337 s 5 are each amended to read as follows:

(1) The commission shall classify a telecommunications company as a competitive telecommunications company if the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

(a) The number and sizes of alternative providers of service;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule.

(2) Competitive telecommunications companies shall be subject to minimal regulation. Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists (~~that shall be effective after ten days' notice to the commission and customers. The commission shall prescribe the form of notice~~). The commission may also waive other regulatory requirements under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A competitive telecommunications company shall at a minimum:

(a) Keep its accounts according to regulations as determined by the commission;

(b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission;

(c) Keep on file at the commission such current price lists and service standards as the commission may require; and

(d) Cooperate with commission investigations of customer complaints.

(3) When a telecommunications company has demonstrated that the equal access requirements ordered by the federal district court in the case of U.S. v. AT&T, 552 F. Supp. 131 (1982), or in supplemental orders, have been met, the commission shall review the classification of telecommunications companies providing inter-LATA interexchange services. At that time, the commission shall classify all such companies as competitive telecommunications companies unless it finds that effective competition, as defined in subsection (1) of this section, does not then exist.

(4) The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if the revocation or reclassification would protect the public interest.

(5) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a competitive telecommunications company if it finds that competition will serve the same purpose and protect the public interest.

Sec. 4. RCW 80.36.330 and 1998 c 337 s 6 are each amended to read as follows:

(1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may permit the service to be provided under a price list (~~effective on ten days notice to the commission and customers. The commission shall prescribe the form of notice~~). The commission may adopt procedural rules necessary to implement this section.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest.

Passed by the Senate February 26, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 190

[House Bill 1352]

RAILROADS—GRADE CROSSING PROTECTIVE FUND

AN ACT Relating to apportionment of the cost of installing and maintaining signals or warning devices at railroad-highway grade crossings; amending RCW 81.53.271 and 81.53.281; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that grade crossing, rail trespass, and other safety issues continue to present a public safety problem.

The legislature further finds that with the increased importance of rail to freight and commuter mobility, there is a direct public benefit in assisting local communities and railroads to work together to address rail-related public safety concerns.

Sec. 2. RCW 81.53.271 and 1982 c 94 s 2 are each amended to read as follows:

The petition shall set forth by description the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance. If the commission directs the installation of a grade crossing protective device, and a federal-aid funding program is available to participate in the costs of such installation, ~~((both))~~ installation and maintenance costs of the device shall be apportioned in accordance with the provisions of RCW 81.53.295. Otherwise if installation is directed by the commission, it shall apportion the cost of installation and maintenance as provided in this section:

(1) Installation: ~~((+))~~ (a) The first twenty thousand dollars shall be apportioned to the grade crossing protective fund created by RCW 81.53.281; and

(b) The remainder of the cost shall be apportioned as follows:

(i) Sixty percent to the grade crossing protective fund, created by RCW 81.53.281;

~~((2))~~ (ii) Thirty percent to the city, town, county, or state; and

~~((3))~~ (iii) Ten percent to the railroad:

PROVIDED, That, if the proposed installation is located at a new crossing requested by a city, town, county, or state, forty percent of the cost shall be apportioned to the city, town, county, or state, and none to the railroad. If the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. In the event the city, town, county, or state should concurrently petition the commission and secure an order authorizing the closure of an existing crossing or crossings in proximity to the crossing for which installation of signals or other warning devices shall have been directed, the apportionment to the petitioning city, town, county, or state shall be reduced by ten percent of the total cost for each crossing ordered closed and the apportionment from the grade crossing protective fund increased accordingly. This exception shall not be construed to permit a charge to the grade crossing protective fund in an amount greater than the total cost otherwise

apportionable to the city, town, county, or state. No reduction shall be applied where one crossing is closed and another opened in lieu thereof, nor to crossings of a private nature.

(2) Maintenance: ~~((+))~~ (a) Twenty-five percent to the grade crossing protective fund, created by RCW 81.53.281; and

~~((2))~~ (b) Seventy-five percent to the railroad:

PROVIDED, That if the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad.

Sec. 3. RCW 81.53.281 and 1998 c 245 s 166 are each amended to read as follows:

There is hereby created in the state treasury a "grade crossing protective fund(,)" to ~~((which shall be transferred all moneys appropriated for the purpose of carrying))~~ carry out the provisions of RCW 81.53.261, 81.53.271, 81.53.281, 81.53.291, and 81.53.295; for grants and/or subsidies to public, private, and nonprofit entities for rail safety projects authorized or ordered by the commission; and for personnel and associated costs related to supervising and administering rail safety grants and/or subsidies. The commission shall transfer from the public service revolving fund's miscellaneous fees and penalties accounts moneys appropriated for these purposes as needed. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. ~~((When federal-aid highway funds are not involved, the railroad shall, upon completion of the installation of any such signal or other protective device and related work, present its claim for reimbursement for the cost of installation and related work from said fund of the amount allocated thereto by the commission. The annual cost of maintenance shall be presented and paid in a like manner.))~~ When federal-aid highway funds are involved, the department of transportation shall, upon entry of an order by the commission requiring the installation or upgrading of a grade crossing protective device, submit to the commission an estimate for the cost of the proposed installation and related work. Upon receipt of the estimate the commission shall pay to the department of transportation the percentage of the estimate specified in RCW 81.53.295, as now or hereafter amended, to be used as the grade crossing protective fund portion of the cost of the installation and related work. ~~((The commission is hereby authorized to recover administrative costs from said fund in an amount not to exceed three percent of the direct appropriation provided for any biennium, and in the event administrative costs exceed three percent of the appropriation, the excess shall be chargeable to regulatory fees paid by railroads pursuant to RCW 81.24.010.~~

~~The office of financial management shall direct the state treasurer to transfer to the motor vehicle fund an amount not to exceed \$1,331,000 from the grade crossing protective fund for the 1987-89 fiscal biennium.))~~

The commission may adopt rules for the allocation of money from the grade crossing protective fund.

Passed by the House February 26, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 191

[Substitute Senate Bill 5912]

PRODUCE RAILCAR POOL

AN ACT Relating to a state produce railcar pool; reenacting and amending RCW 43.79A.040; adding new sections to chapter 47.76 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. FINDINGS AND INTENT. The legislature finds that an actively coordinated and cooperatively facilitated railcar pool for transportation of perishable agricultural commodities is necessary for the continued viability and competitiveness of Washington's agricultural industry. The legislature also finds that the rail transportation model established by the Washington Grain Train program has been successful in serving the shipping needs of the wheat industry.

It is, therefore, the intent of the legislature to authorize and direct the Washington department of transportation to develop a railcar program for Washington's perishable commodity industries to be known as the Washington Produce Railcar Pool. This railcar program should be modeled from the Washington Grain Train program, but be made flexible enough to work with entities outside state government in order to fulfill its mission, including, but not limited to, the federal and local governments, commodity commissions, and private entities.

NEW SECTION. Sec. 2. DEFINITION. As used in this act "short line railroad" means a Class II or Class III railroad as defined by the United States Surface Transportation Board.

NEW SECTION. Sec. 3. DEPARTMENTAL AUTHORITY. In addition to powers otherwise granted by law, the department may establish a Washington Produce Railcar Pool to promote viable, cost-effective rail service for Washington produce, including but not limited to apples, onions, pears, and potatoes, both processed and fresh.

To the extent that funds are appropriated, the department may:

(1) Operate the Washington Produce Railcar Pool program while working in close coordination with the department of agriculture, interested commodity commissions, port districts, and other interested parties;

(2) For the purposes of this program:

(a) Purchase or lease new or used refrigerated railcars;

(b) Accept donated refrigerated railcars; and

(c) Refurbish and remodel the railcars.

(3) Hire, in consultation with affected stakeholders, including but not limited to short line railroads, commodity commissions, and port districts, a transportation management firm to perform the function outlined in section 5 of this act; and

(4) Contribute the efforts of a short line rail-financing expert to find funding for the project to help interested short line railroads in this state to accomplish the necessary operating arrangements once the railcars are ready for service.

NEW SECTION. Sec. 4. FUNDING. To the extent that funds are appropriated, the department shall fund the program as follows: The department may accept funding from the federal government, or other public or private sources, to purchase or lease new or used railcars and to refurbish and remodel

the railcars as needed. Nothing in this section precludes other entities, including but not limited to short line railroads, from performing the remodeling under sections 1 through 6 of this act.

NEW SECTION. Sec. 5. RAILCAR POOL MANAGEMENT. (1) The transportation management firm hired under section 3(3) of this act shall manage the day-to-day operations of the railcars, such as monitoring the location of the cars, returning them to this state, distributing them, arranging for pretrips and repairs, and arranging for per diem, mileage allowances, and other freight billing charges with the railroads.

(2) The railcar pool must be managed over the life of the railcars so that the railcars will be distributed to railroads and port districts around the state for produce loadings as market conditions warrant or to other users, including out-of-state users by contractual agreement, during times of excess capacity.

(3) To maximize railcar availability and use, the department or the transportation management firm may make agreements with the transcontinental railroad systems to pool Washington-owned or Washington-managed railcars with those of the railroads. In such instances, the railroad must agree to provide immediately an equal number of railcars to the Washington railcar pool.

(4) The department shall act in an oversight role to verify that the railcar pool is managed in accordance with subsections (2) and (3) of this section.

NEW SECTION. Sec. 6. PRODUCE RAILCAR POOL ACCOUNT. The produce railcar pool account is created in the custody of the state treasurer. All receipts from per diem charges, mileage charges, and freight billing charges paid by railroads and shippers that use the railcars in the Washington Produce Railcar Pool must be deposited into the account. Expenditures from the account may be used only for the purposes of sections 1 through 5 of this act. Only the secretary of transportation or the secretary'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.

Sec. 7. RCW 43.79A.040 and 2002 c 322 s 5, 2002 c 204 s 7, and 2002 c 61 s 6 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 promise scholarship account, the college savings program account, 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 state combined fund drive account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the produce railcar pool account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility 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 city and county advance right-of-way revolving fund, 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. 8. Section captions used in this act are not part of the law.

NEW SECTION. Sec. 9. Sections 1 through 6 of this act are each added to chapter 47.76 RCW.

Passed by the Senate April 22, 2003.
 Passed by the House April 17, 2003.
 Approved by the Governor May 9, 2003.
 Filed in Office of Secretary of State May 9, 2003.

CHAPTER 192

[House Bill 1114]
 SCHOOL ZONES

AN ACT Relating to school or playground speed zones; and amending RCW 46.61.440.

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

Sec. 1. RCW 46.61.440 and 1997 c 80 s 2 are each amended to read as follows:

(1) Subject to RCW 46.61.400(1), and except in those instances where a lower maximum lawful speed is provided by this chapter or otherwise, it shall be unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour when operating any vehicle upon a highway either inside or outside an incorporated city or town when passing any marked school

or playground crosswalk when such marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs. The speed zone at the crosswalk shall extend three hundred feet in either direction from the marked crosswalk.

(2) A county or incorporated city or town may create a school or playground speed zone on a highway bordering a marked school or playground, in which zone it is unlawful for a person to operate a vehicle at a speed in excess of twenty miles per hour. The school or playground speed zone may extend three hundred feet from the border of the school or playground property; however, the speed zone may only include area consistent with active school or playground use.

(3) A person found to have committed any infraction relating to speed restrictions within a school or playground speed zone shall be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.

~~((3))~~ (4) The school zone safety account is created in the custody of the state treasurer. Fifty percent of the moneys collected under subsection ~~((2))~~ (3) of this section shall be deposited into the account. Expenditures from the account may be used only by the Washington traffic safety commission solely to fund projects in local communities to improve school zone safety, pupil transportation safety, and student safety in school bus loading and unloading areas. Only the director of the traffic safety commission 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 until July 1, 1999, after which date moneys in the account may be spent only after appropriation.

Passed by the House April 21, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 193

[House Bill 1379]

TRAFFIC CONTROL—PRIVATE ROADS

AN ACT Relating to agreements with cities, towns, and counties for traffic control on private roads by local law enforcement personnel; and adding a new section to chapter 46.61 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.61 RCW to read as follows:

State, local, or county law enforcement personnel may enforce speeding violations under RCW 46.61.400 on private roads within a community organized under chapter 64.38 RCW if:

(1) A majority of the homeowner's association's board of directors votes to authorize the issuance of speeding infractions on its private roads, and declares a speed limit not lower than twenty miles per hour;

(2) A written agreement regarding the speeding enforcement is signed by the homeowner's association president and the chief law enforcement official of the city or county within whose jurisdiction the private road is located;

(3) The homeowner's association has provided written notice to all of the homeowners describing the new authority to issue speeding infractions; and

(4) Signs have been posted declaring the speed limit at all vehicle entrances to the community.

Passed by the House April 21, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 194

[Substitute House Bill 2033]

REGIONAL TRANSPORTATION TAXES—DISTRIBUTION

AN ACT Relating to requiring regional transportation investment district tax revenue to be allocated proportionally among member counties; and amending RCW 36.120.040 and 36.120.140.

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

Sec. 1. RCW 36.120.040 and 2002 c 56 s 104 are each amended to read as follows:

(1) A regional transportation investment district planning committee shall adopt a regional transportation investment plan providing for the development, construction, and financing of transportation projects. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria;

(b) The input of cities located within a participating county; and

(c) The input of regional transportation planning organizations in which a participating county is located. A regional transportation planning organization in which a participating county is located shall review its adopted regional transportation plan and submit, for the planning committee's consideration, its list of transportation improvement priorities.

(2) The planning committee may coordinate its activities with the department, which shall provide services, data, and personnel to assist in this planning as desired by the planning committee. In addition, the planning committee may coordinate with affected cities, towns, and other local governments that engage in transportation planning.

(3) The planning committee shall:

(a) Conduct public meetings that are needed to assure active public participation in the development of the plan;

(b) Adopt a plan proposing the:

(i) Creation of a regional transportation investment district; and
~~((recommending the))~~

(ii) Construction of transportation projects to improve mobility within each county. Operations, maintenance, and preservation of facilities or systems may not be part of the plan; ~~((and))~~

(c) Recommend sources of revenue authorized by RCW 36.120.050 and a financing plan to fund selected transportation projects. The overall plan of the

district must leverage the district's financial contributions so that the federal, state, local, and other revenue sources continue to fund major congestion relief and transportation capacity improvement projects in each county and the district. A combination of local, state, and federal revenues may be necessary to pay for transportation projects, and the planning committee shall consider all of these revenue sources in developing a plan.

(4) The plan must use tax revenues and related debt for projects that generally benefit a participating county in proportion to the general level of tax revenues generated within that participating county. This equity principle applies to all modifications to the plan, appropriation of contingency funds not identified within the project estimate, and future phases of the plan. During implementation of the plan, the board shall retain the flexibility to manage distribution of revenues, debt, and project schedules so that the district may effectively implement the plan. Nothing in this section should be interpreted to prevent the district from pledging district-wide tax revenues for payment of any contract or debt entered into under RCW 36.120.130.

(5) Before adopting the plan, the planning committee, with assistance from the department, shall work with the lead agency to develop accurate cost forecasts for transportation projects. This project costing methodology must be integrated with revenue forecasts in developing the plan and must at a minimum include estimated project costs in constant dollars as well as year of expenditure dollars, the range of project costs reflected by the level of project design, project contingencies, identification of mitigation costs, the range of revenue forecasts, and project and plan cash flow and bond analysis. The plan submitted to the voters must provide cost estimates for each project, including reasonable contingency costs. Plans submitted to the voters must provide that the maximum amount possible of the funds raised will be used to fund projects in the plan, including environmental improvements and mitigation, and that administrative costs be minimized. If actual revenue exceeds actual plan costs, the excess revenues must be used to retire any outstanding debt associated with the plan.

~~((5))~~ (6) If a county opts not to adopt the plan or participate in the regional transportation investment district, but two or more contiguous counties do choose to continue to participate, then the planning committee may, within ninety days, redefine the regional transportation investment plan and the ballot measure to be submitted to the people to reflect elimination of the county, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to adopt the redefined plan and participate. This action must be completed within sixty days after receipt of the redefined plan.

~~((6))~~ (7) Once adopted, the plan must be forwarded to the participating county legislative authorities to initiate the election process under RCW 36.120.070. The planning committee shall at the same time provide notice to each city and town within the district, the governor, the chairs of the transportation committees of the legislature, the secretary of transportation, and each legislator whose legislative district is partially or wholly within the boundaries of the district.

~~((7))~~ (8) If the ballot measure is not approved, the planning committee may redefine the selected transportation projects, financing plan, and the ballot measure. The county legislative authorities may approve the new plan and ballot

measure, and may then submit the revised proposition to the voters at the next election or a special election. If no ballot measure is approved by the voters by the third vote, the planning committee is dissolved.

Sec. 2. RCW 36.120.140 and 2002 c 56 s 114 are each amended to read as follows:

(1) ~~((A plan may be modified))~~ The board may modify the plan to change transportation projects or revenue sources if:

(a) Two or more participating counties adopt a resolution to modify the plan; and

(b) The counties submit to the voters in the district a ballot measure that redefines the scope of the plan, its projects, its schedule, its costs, or the revenue sources. If the voters fail to approve the redefined plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(2) The board may modify the plan to change transportation projects within a participating county if:

(a) A majority of the board approves the change;

(b) The modifications are limited to projects within the county;

(c) The county submits to the voters in the county a ballot measure that redefines:

(i) Projects;

(ii) Scopes of projects; or

(iii) Costs; and

(iv) The financial plan for the county;

(d) The proposed modifications maintain the equity of the plan and does not increase the total level of plan expenditure for the county.

If the voters fail to approve the modified plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(3) If a transportation project cost exceeds its original cost by more than twenty percent as identified in the plan:

(a) The board shall, in coordination with the county legislative authorities, submit to the voters in the district or county a ballot measure that redefines the scope of the transportation project, its schedule, or its costs. If the voters fail to approve the redefined transportation project, the district shall terminate work on that transportation project, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds that would otherwise have been expended on the terminated transportation project must first be used to retire any outstanding debt attributable to the plan and then may be used to implement the remainder of the plan.

(b) Alternatively, upon adoption of a resolution by two or more participating counties:

(i) The counties shall submit to the voters in the district a ballot measure that redefines the scope of the plan, its transportation projects, its schedule, or its costs. If the voters fail to approve the redefined plan, the district shall terminate work on that plan, except that the district may take reasonable steps to use,

preserve, or connect any improvement already constructed. The remainder of any funds must be used to retire any outstanding debt attributable to the plan; or

(ii) The counties may elect to have the district continue the transportation project without submitting an additional ballot proposal to the voters.

~~((3))~~ (4) To assure accountability to the public for the timely construction of the transportation improvement project or projects within cost projections, the district shall issue a report, at least annually, to the public and copies of the report to newspapers of record in the district. In the report, the district shall indicate the status of transportation project costs, transportation project expenditures, revenues, and construction schedules. The report may also include progress towards meeting the performance criteria provided under this chapter.

Passed by the House March 17, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 195

[Substitute House Bill 1597]

COMMERCIAL VEHICLE DRIVERS

AN ACT Relating to physical examinations for commercial drivers' licenses; amending RCW 46.25.070; adding new sections to chapter 46.25 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 current economic conditions impose severe hardships on many commercial vehicle drivers. The legislature finds that commercial drivers who may not currently be working may not be able to afford the expense of a required physical in order to maintain their commercial driver's license. The legislature finds that Washington's commercial driver's license statutes should be harmonized with federal requirements, which require proof of a physical capacity to drive a commercial vehicle, along with a valid commercial driver's license, but do not link the two requirements. The legislature finds that allowing commercial drivers to delay getting a physical until they are actually driving a commercial vehicle will prevent the imposition of unnecessary expense and hardship on Washington's commercial vehicle drivers.

Sec. 2. RCW 46.25.070 and 1991 c 73 s 2 are each amended to read as follows:

(1) The application for a commercial driver's license or commercial driver's instruction permit must include the following:

- (a) The full name and current mailing and residential address of the person;
- (b) A physical description of the person, including sex, height, weight, and eye color;
- (c) Date of birth;
- (d) The applicant's Social Security number;
- (e) The person's signature;
- (f) Certifications including those required by 49 C.F.R. part 383.71(a);

(g) ~~((Proof of certification of physical examination or waiver, as required by 49 C.F.R. 391.41 through 391.49;~~

~~(h))~~ Any other information required by the department; and

~~((+))~~ (h) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(3) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

NEW SECTION. Sec. 3. A new section is added to chapter 46.25 RCW to read as follows:

A person may not drive a commercial motor vehicle unless he or she is physically qualified to do so and, except as provided in 49 C.F.R. Sec. 391.67, has on his or her person the original, or a photographic copy, of a medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle.

NEW SECTION. Sec. 4. A new section is added to chapter 46.25 RCW to read as follows:

(1) It is a traffic infraction for a licensee under this chapter to drive a commercial vehicle without having on his or her person the original, or a photographic copy, of a medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle.

(2) A person who violates this section is subject to a penalty of two hundred fifty dollars. If the person appears in person before the court or submits by mail written proof that he or she had, at the time the infraction took place, the medical examiner's certificate, the court shall reduce the penalty to fifty dollars.

Passed by the House March 11, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 196

[Engrossed Substitute House Bill 1592]

SPECIAL LICENSE PLATES

AN ACT Relating to special license plates: amending RCW 46.16.233 and 46.16.314; adding new sections to chapter 46.16 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature has seen an increase in the demand from constituent groups seeking recognition and funding through the establishment of commemorative or special license plates. The high cost of implementing a new special license plate series coupled with the uncertainty of the state's ability to recoup its costs, has led the legislature to delay the implementation of new special license plates. In order to address these issues, it is the intent of the legislature to create a mechanism that will allow for the evaluation of special license plate requests and establish a funding policy that will alleviate the financial burden currently placed on the state. Using these two

strategies, the legislature will be better equipped to efficiently process special license plate legislation.

PART I
SPECIAL LICENSE PLATE REVIEW BOARD

NEW SECTION. Sec. 101. A new section is added to chapter 46.16 RCW to read as follows:

SPECIAL LICENSE PLATE REVIEW BOARD CREATED. (1) The special license plate review board is created.

(2) The board will consist of seven members: One member appointed by the governor and who will serve as chair of the board; four members of the legislature, one from each caucus of the house of representatives and the senate; a department of licensing representative appointed by the director; and a Washington state patrol representative appointed by the chief.

(3) Members shall serve terms of four years, except that four of the members initially appointed will be appointed for terms of two years. No member may be appointed for more than three consecutive terms.

(4) The legislative transportation committee may remove members from the board before the expiration of their terms only for cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office as ordered by the Thurston county superior court, upon petition and show cause proceedings brought for that purpose in that court and directed to the board member in question.

NEW SECTION. Sec. 102. A new section is added to chapter 46.16 RCW to read as follows:

ADMINISTRATION OF THE BOARD. (1) The board shall meet periodically at the call of the chair, but must meet at least one time each year within ninety days before an upcoming regular session of the legislature. The board may adopt its own rules and may establish its own procedures. It shall act collectively in harmony with recorded resolutions or motions adopted by a majority vote of the members, and it must have a quorum present to take a vote on a special license plate application.

(2) The board will be compensated from the general appropriation for the legislative transportation committee in accordance with RCW 43.03.250. Each board member will be compensated in accordance with RCW 43.03.250 and reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the board or that are incurred in the discharge of duties requested by the chair. However, in no event may a board member be compensated in any year for more than one hundred twenty days, except the chair may be compensated for not more than one hundred fifty days. Service on the board does not qualify as a service credit for the purposes of a public retirement system.

(3) The board shall keep proper records and is subject to audit by the state auditor or other auditing entities.

(4) The department of licensing shall provide administrative support to the board, which must include at least the following:

(a) Provide general staffing to meet the administrative needs of the board;

(b) Report to the board on the reimbursement status of any new special license plate series for which the state had to pay the start-up costs;

(c) Process special license plate applications and confirm that the sponsoring organization has submitted all required documentation. If an incomplete application is received, the department must return it to the sponsoring organization;

(d) Compile the annual financial reports submitted by sponsoring organizations with active special license plate series and present those reports to the board for review and approval.

(5) The legislative transportation committee shall provide general oversight of the board, which must include at least the following:

(a) Process and approve board member compensation requests;

(b) Review the annual financial reports submitted to the board by sponsoring organizations;

(c) Review annually the list of the board's approved and rejected special license plate proposals submitted by sponsoring organizations.

NEW SECTION. **Sec. 103.** A new section is added to chapter 46.16 RCW to read as follows:

AUTHORITY AND RESPONSIBILITIES OF THE BOARD. (1) The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.

(2) The board must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(3) Duties of the board include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the legislative transportation committee;

(b) Report annually to the legislative transportation committee on the special license plate applications that were considered by the board;

(c) Issue approval and rejection notification letters to sponsoring organizations, the department, the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application;

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The board may submit a recommendation to discontinue a special plate series to the chairs of the senate and house of representatives transportation committees.

**PART II
ELIGIBILITY REQUIREMENTS FOR A SPONSORING
ORGANIZATION**

NEW SECTION. **Sec. 201.** A new section is added to chapter 46.16 RCW to read as follows:

ELIGIBILITY REQUIREMENTS. (1) For an organization to qualify for a special license plate under the special license plate approval program created in sections 101 through 303 of this act, the sponsoring organization must submit

documentation in conjunction with the application to the department that verifies:

(a) That the organization is a nonprofit organization, as defined in 26 U.S.C. Sec. 501(c)(3). The department may request a copy of an Internal Revenue Service ruling to verify an organization's nonprofit status; and

(b) That the organization is located in Washington and has registered as a charitable organization with the secretary of state's office as required by law.

(2) For a governmental body to qualify for a special license plate under the special license plate approval program created in sections 101 through 303 of this act, a governmental body must be:

(a) A political subdivision, including but not limited to any county, city, town, municipal corporation, or special purpose taxing district that has the express permission of the political subdivision's executive body to sponsor a special license plate;

(b) A federally recognized tribal government that has received the approval of the executive body of that government to sponsor a special license plate;

(c) A state agency that has both received approval from the director of the agency or the department head, and has the express statutory authority to sponsor a special license plate; or

(d) A community or technical college that has the express permission of the college's board of trustees to sponsor a special license plate.

PART III GENERAL REQUIREMENTS

NEW SECTION. **Sec. 301.** A new section is added to chapter 46.16 RCW to read as follows:

APPLICATION REQUIREMENTS. (1) A sponsoring organization meeting the requirements of section 201 of this act, applying for the creation of a special license plate to the special license plate review board must, on an application supplied by the department, provide the minimum application requirements in subsection (2) of this section. If the sponsoring organization cannot meet the payment requirements of subsection (2) of this section, then the organization must meet the requirements of subsection (3) of this section.

(2) The sponsoring organization shall:

(a) Submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The department shall place this money into the special license plate applicant trust account created under section 302(3) of this act;

(b) Provide a proposed license plate design;

(c) Provide a marketing strategy outlining short and long-term marketing plans for the special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;

(d) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate; and

(e) Provide proof of organizational qualifications as determined by the department as provided for in section 201 of this act.

(3) If the sponsoring organization is not able to meet the payment requirements of subsection (2)(a) of this section and can demonstrate this fact to the satisfaction of the department, the sponsoring organization shall:

(a) Submit an application and nonrefundable fee of two thousand dollars, for deposit in the motor vehicle account, to the department;

(b) Provide signature sheets that include signatures from individuals who intend to purchase the special license plate and the number of plates each individual intends to purchase. The sheets must reflect a minimum of two thousand intended purchases of the special license plate;

(c) Provide a proposed license plate design;

(d) Provide a marketing strategy outlining short and long-term marketing plans for the special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;

(e) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate; and

(f) Provide proof of organizational qualifications as determined by the department as provided in section 201 of this act.

(4) After an application is approved by the special license plate review board, the application need not be reviewed again by the board for a period of three years.

NEW SECTION. Sec. 302. A new section is added to chapter 46.16 RCW to read as follows:

DISPOSITION OF REVENUES. (1)(a) Revenues generated from the sale of special license plates for those sponsoring organizations who used the application process in section 301(3) of this act must be deposited into the motor vehicle account until the department determines that the state's implementation costs have been fully reimbursed. The department shall apply the application fee required under section 301(3)(a) of this act towards those costs.

(b) When it is determined that the state has been fully reimbursed the department must notify the house of representatives and senate transportation committees, the sponsoring organization, and the treasurer, and commence the distribution of the revenue as otherwise provided by law.

(2) If reimbursement does not occur within the two-year time frame, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the plate series must be discontinued immediately. Special plates issued before discontinuation are valid until replaced under RCW 46.16.233. The state must be reimbursed for its portion of the implementation costs within two years from the date the new plate series goes on sale to the public.

(3) The special license plate applicant trust account is created in the custody of the state treasurer. All receipts from special license plate applicants, except the application fee as provided in section 301(3) of this act, must be deposited into the account. Only the director of the department or the director's designee may authorize disbursements from the account. The account is not subject to the allotment procedures under chapter 43.88 RCW, nor is an appropriation required for disbursements.

(4) The department shall provide the special license plate applicant with a written receipt for the payment.

(5) The department shall maintain a record of each special license plate applicant trust account deposit, including, but not limited to, the name and address of each special license plate applicant whose funds are being deposited, the amount paid, and the date of the deposit.

(6) After the department receives written notice that the special license plate applicant's application has been:

(a) Approved by the legislature the director shall request that the money be transferred to the motor vehicle account;

(b) Denied by the special license plate review board or the legislature the director shall provide a refund to the applicant within thirty days; or

(c) Withdrawn by the special license plate applicant the director shall provide a refund to the applicant within thirty days.

NEW SECTION. Sec. 303. A new section is added to chapter 46.16 RCW to read as follows:

SPECIAL LICENSE PLATE ON-GOING REQUIREMENTS. (1) Within thirty days of legislative enactment of a new special license plate series for a qualifying organization meeting the requirements of section 201(1) of this act, the department shall enter into a written agreement with the organization that sponsored the special license plate. The agreement must identify the services to be performed by the sponsoring organization. The agreement must be consistent with all applicable state law and include the following provision:

"No portion of any funds disbursed under the agreement may be used, directly or indirectly, for any of the following purposes:

(a) Attempting to influence: (i) The passage or defeat of legislation by the legislature of the state of Washington, by a county, city, town, or other political subdivision of the state of Washington, or by the Congress; or (ii) the adoption or rejection of a rule, standard, rate, or other legislative enactment of a state agency;

(b) Making contributions reportable under chapter 42.17 RCW; or

(c) Providing a: (i) Gift; (ii) honoraria; or (iii) travel, lodging, meals, or entertainment to a public officer or employee."

(2) The sponsoring organization must submit an annual financial report by September 30th of each year to the department detailing actual revenues and expenditures of the revenues received from sales of the special license plate. Consistent with the agreement under subsection (1) of this section, the sponsoring organization must expend the revenues generated from the sale of the special license plate series for the benefit of the public, and it must be spent within this state. Disbursement of the revenue generated from the sale of the special license plate to the sponsoring organization is contingent upon the organization meeting all reporting and review requirements as required by the department.

(3) If the sponsoring organization ceases to exist or the purpose of the special license plate series ceases to exist, revenues generated from the sale of the special license plates must be deposited into the motor vehicle account.

(4) A sponsoring organization may not seek to redesign its plate series until all of the inventory is sold or purchased by the organization itself. All cost for redesign of a plate series must be paid by the sponsoring organization.

NEW SECTION. Sec. 304. A new section is added to chapter 46.16 RCW to read as follows:

NONREVIEWED PLATES. (1) A special license plate series created by the legislature after January 1, 2004, that has not been reviewed and approved by the special license plate review board is subject to the following requirements:

(a) The organization sponsoring the license plate series shall, within thirty days of enactment of the legislation creating the plate series, submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The prepayment will be credited to the motor vehicle fund. The creation and implementation of the plate series may not commence until payment is received by the department.

(b) If the sponsoring organization is not able to meet the prepayment requirements in (a) of this subsection and can demonstrate this fact to the satisfaction of the department, the revenues generated from the sale of the special license plates must be deposited in the motor vehicle account until the department determines that the state's portion of the implementation costs have been fully reimbursed. When it is determined that the state has been fully reimbursed the department must notify the treasurer to commence distribution of the revenue according to statutory provisions.

(c) The sponsoring organization must provide a proposed license plate design to the department within thirty days of enactment of the legislation creating the plate series.

(2) The state must be reimbursed for its portion of the implementation costs within two years from the date the new plate series goes on sale to the public. If the reimbursement does not occur within the two-year time frame, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the plate series must be discontinued immediately. Those plates issued before discontinuation are valid until replaced under RCW 46.16.233.

(3) If the sponsoring organization ceases to exist or the purpose of the special plate series ceases to exist, revenues generated from the sale of the special license plates must be deposited into the motor vehicle account.

(4) A sponsoring organization may not seek to redesign their plate series until all of the existing inventory is sold or purchased by the organization itself. All cost for redesign of a plate series must be paid by the sponsoring organization.

PART IV STANDARD BACKGROUND

Sec. 401. RCW 46.16.233 and 2000 c 37 s 1 are each amended to read as follows:

(1) 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, the appearance of the background of all vehicle license plates may vary in color and design but must be ((issued on a standard background)) legible and clearly identifiable as a Washington state license plate, 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.

(2) Special license plate series approved by the special license plate review board created under section 101 of this act and enacted by the legislature may display a symbol or artwork approved by the special license plate review board.

PART V PRIOR SPECIAL PLATE SERIES CONTINUATION

Sec. 50I. RCW 46.16.314 and 1997 c 291 s 9 are each amended to read as follows:

~~((After a period of three years from the initial issuance of a special license plate series;))~~ The department has the sole discretion, based upon the number of sales to date, to determine whether or not to continue issuing ((the)) license plates in a special series created before January 1, 2003.

PART VI TECHNICAL

NEW SECTION. **Sec. 60I.** Part headings used in this act are not part of the law.

PART VII NULL AND VOID

NEW SECTION. **Sec. 70I.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2003, in the omnibus transportation appropriations act, this act is null and void.

Passed by the House April 21, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 197

[Substitute Senate Bill 5335]

MOTORCYCLE HELMETS

AN ACT Relating to the definition of a motorcycle helmet; and amending RCW 46.37.530.

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

Sec. 1. RCW 46.37.530 and 1997 c 328 s 4 are each amended to read as follows:

(1) It is unlawful:

(a) For any person to operate a motorcycle or motor-driven cycle not equipped with mirrors on the left and right sides of the motorcycle which shall be so located as to give the driver a complete view of the highway for a distance of at least two hundred feet to the rear of the motorcycle or motor-driven cycle: PROVIDED, That mirrors shall not be required on any motorcycle or motor-driven cycle over twenty-five years old originally manufactured without mirrors and which has been restored to its original condition and which is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show, or other such assemblage: PROVIDED FURTHER, That no mirror is required on any motorcycle manufactured prior to January 1, 1931;

(b) For any person to operate a motorcycle or motor-driven cycle which does not have a windshield unless wearing glasses, goggles, or a face shield of a type conforming to rules adopted by the state patrol;

(c) For any person to operate or ride upon a motorcycle, motor-driven cycle, or moped on a state highway, county road, or city street unless wearing upon his or her head a ~~((protective))~~ motorcycle helmet ~~((of a type conforming to rules adopted by the state patrol))~~ except when the vehicle is an antique motor-driven cycle or automobile that is licensed as a motorcycle or when the vehicle is equipped with seat belts and roll bars approved by the state patrol. The motorcycle helmet ~~((must be equipped with either a))~~ neck or chin strap ~~((which shall))~~ must be fastened securely while the motorcycle or motor-driven cycle is in motion. Persons operating electric-assisted bicycles shall comply with all laws and regulations related to the use of bicycle helmets;

(d) For any person to transport a child under the age of five on a motorcycle or motor-driven cycle;

(e) For any person to sell or offer for sale a motorcycle helmet ~~((which))~~ that does not meet the requirements established by ~~((the state patrol))~~ this section.

(2) The state patrol ~~((is hereby authorized and empowered to))~~ may adopt and amend rules, pursuant to the Administrative Procedure Act, concerning ~~((the))~~ standards ~~((and procedures for conformance of rules adopted))~~ for glasses, goggles, and face shields~~((, and protective helmets))~~.

(3) For purposes of this section, "motorcycle helmet" means a protective covering for the head consisting of a hard outer shell, padding adjacent to and inside the outer shell, and a neck or chin strap type retention system, with a sticker indicating that the motorcycle helmet meets standards established by the United States Department of Transportation.

Passed by the Senate April 22, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 198

[Engrossed Substitute House Bill 1463]

BUS SHELTERS—ADVERTISING

AN ACT Relating to signs on bus shelters; amending RCW 47.12.120 and 47.36.030; and adding a new section to chapter 47.36 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.36 RCW to read as follows:

(1) Local transit authority bus shelters within the right of way of the state highway system may display and maintain commercial advertisements subject to applicable federal regulations, if any. Pursuant to RCW 47.12.120, the department may lease state right of way air space to local transit authorities for this purpose, unless there are significant safety concerns regarding the placement of certain advertisements.

(2) Advertisements posted on a local transit authority's bus shelter may not exceed twenty-four square feet on each side of the panel. Panels may not be placed on the roof of the shelter or on the forward side of the shelter facing oncoming traffic.

Sec. 2. RCW 47.12.120 and 1977 ex.s. c 151 s 50 are each amended to read as follows:

The department (~~(is authorized, subject to the provisions and requirements of zoning ordinances of political subdivisions of government, to)~~) may rent or lease any lands, improvements, or air space above or below any lands(~~(; including those used or to be used for both limited access and conventional highways which))~~ that are held for highway purposes but are not presently needed(;-). The rental or lease:

(1) Must be upon such terms and conditions as the department may determine;

(2) Is subject to the provisions and requirements of zoning ordinances of political subdivisions of government;

(3) Includes lands used or to be used for both limited access and conventional highways that otherwise meet the requirements of this section; and

(4) In the case of bus shelters provided by a local transit authority that include commercial advertising, may charge the transit authority only for commercial space.

Sec. 3. RCW 47.36.030 and 1977 ex.s. c 151 s 61 are each amended to read as follows:

The secretary of transportation shall have the power and it shall be its duty to adopt and designate a uniform state standard for the manufacture, display, erection, and location of all signs, signals, signboards, guideposts, and other traffic devices erected or to be erected upon the state highways of the state of Washington for the purpose of furnishing information to persons traveling upon such state highways regarding traffic regulations, directions, distances, points of danger, and conditions requiring caution, and for the purpose of imposing restrictions upon persons operating vehicles thereon. Such signs shall conform as nearly as practicable to the manual of specifications for the manufacture, display, and erection of uniform traffic control devices for streets and highways and all amendments, corrections, and additions thereto. The department of

transportation shall prepare plans and specifications of the uniform state standard of traffic devices so adopted and designated, showing the materials, colors, and designs thereof, and shall upon the issuance of any such plans and specifications or revisions thereof and upon request, furnish to the boards of county commissioners and the governing body of any incorporated city or town, a copy thereof. Signs, signals, signboards, guideposts, and other traffic devices erected on county roads shall conform in all respects to the specifications of color, design, and location approved by the secretary. Traffic devices hereafter erected within incorporated cities and towns shall conform to such uniform state standard of traffic devices so far as is practicable. The uniform system must allow local transit authority bus shelters located within the right of way of the state highway system to display and maintain commercial advertisements subject to applicable federal regulations, if any.

Passed by the House March 10, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 199

[House Bill 1350]

TECHNICAL CORRECTIONS—NOTARIES PUBLIC

AN ACT Relating to making technical corrections concerning notaries public under the authority of RCW 1.08.025; and repealing RCW 42.44.040.

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

NEW SECTION. Sec. 1. RCW 42.44.040 (Certificate of appointment) and 1985 c 156 s 4 are each repealed.

EXPLANATORY NOTE

The language contained in RCW 42.44.040 was added verbatim to RCW 42.44.030 by section 287, chapter 86, Laws of 2002.

Passed by the House February 24, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 200

[Substitute House Bill 1634]

RESIDENTIAL PROPERTY SELLER DISCLOSURE STATEMENT

AN ACT Relating to the residential property seller disclosure statement; and amending RCW 64.06.020.

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

Sec. 1. RCW 64.06.020 and 1996 c 301 s 2 are each amended to read as follows:

(1) In a transaction for the sale of residential (~~real~~) property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement, or unless the transfer is exempt under RCW 64.06.010, deliver to the buyer a completed (~~real property transfer~~) seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA". If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY (~~THE SELLER(S); CONCERNING~~) SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

~~((DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF))~~ SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME ((THIS DISCLOSURE FORM IS COMPLETED BY THE SELLER:)) SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS((, UNLESS OTHERWISE AGREED, FROM THE SELLER'S DELIVERY OF THIS SELLER'S)) FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND ((YOUR)) THE AGREEMENT BY DELIVERING ((YOUR SEPARATE)) A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO ((THE SELLER; UNLESS YOU WAIVE THIS RIGHT AT OR)) SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO ((ENTERING)) OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY ((THE)) SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN ((THE)) BUYER AND ((THE)) SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF ((A QUALIFIED SPECIALIST TO INSPECT

~~THE PROPERTY ON YOUR BEHALF, FOR EXAMPLE)) QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST ((AND DRY ROT)) INSPECTORS. THE PROSPECTIVE BUYER AND ((THE OWNER)) SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY ((AND)) OR TO PROVIDE ((FOR)) APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.~~

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If ("Yes" attach a copy or explain) you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

- Yes No Don't know A. Do you have legal authority to sell the property? If no, please explain.
- Yes No Don't know *B. Is title to the property subject to any of the following?
 - (1) First right of refusal
 - (2) Option
 - (3) Lease or rental agreement
 - (4) Life estate?
- Yes No Don't know *C. Are there any encroachments, boundary agreements, or boundary disputes?
- Yes No Don't know *D. Are there any rights of way, easements, or access limitations that may affect the ((owner's)) Buyer's use of the property?
- Yes No Don't know *E. Are there any written agreements for joint maintenance of an easement or right of way?
- Yes No Don't know *F. Is there any study, survey project, or notice that would adversely affect the property?
- Yes No Don't know *G. Are there any pending or existing assessments against the property?
- Yes No Don't know *H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the ((subject)) property that would affect future construction or remodeling?
- Yes No Don't know *I. Is there a boundary survey for the property?
- Yes No Don't know *J. Are there any covenants, conditions, or restrictions which affect the property?

2. WATER

- A. Household Water
 - (1) The source of ((the)) water for the property is;
 - Private or publicly owned water system
 - Private well serving only the subject property
 - * Other water system

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	<u>*If shared, are there any written agreements?</u> <input type="checkbox"/> Public <input type="checkbox"/> Community <input type="checkbox"/> Private <input type="checkbox"/> Shared (2) <u>Water source information:</u> <u>*a. Are there any written agreements for shared water source?</u> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know ((*b-)) <u>*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?</u> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know ((*e-)) <u>*(3) Are there any known problems or repairs needed?</u> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know ((*d-Does)) <u>(4) During your ownership, has the source (provide) provided an adequate year round supply of potable water? If no, please explain.</u> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know ((*2)) <u>*(5) Are there any water treatment systems for the property? If yes, are they <input type="checkbox"/> Leased <input type="checkbox"/> Owned</u>
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Irrigation (1) Are there any water rights for the property, such as a water right, permit, certificate, or claim? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know ((*2)) <u>If they exist, to your knowledge,)</u> <u>*(a) If yes, have the water rights been used during the last (five-year period) five years?</u> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know ((*3)) <u>*(b) If so, is the certificate available?</u>
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. Outdoor Sprinkler System (1) Is there an outdoor sprinkler system for the property? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know ((*2)) <u>(2) If yes, are there any defects in the (outdoor-sprinkler) system?</u> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <u>*(3) If yes, is the sprinkler system connected to irrigation water?</u>
			3. SEWER/ (SEPTIC) ON-SITE SEWAGE SYSTEM A. The property is served by: <input type="checkbox"/> Public sewer ((main)) system, <input type="checkbox"/> ((Septic tank)) On-site sewage system <u>(including pipes, tanks, drainfields, and all other component parts)</u> <input type="checkbox"/> Other disposal system ((describe)) Please describe: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know B. If ((the property is served by a public or community sewer main, is the house connected to the)) <u>public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.</u>

Yes No Don't know

C. Is the property (~~currently subject to a sewer capacity charge~~) subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

Yes No Don't know

D. If the property is connected to (~~a septic~~) an on-site sewage system:

~~*(1)~~ *(1) Was a permit issued for its construction, and was it approved by the (~~city or county~~) local health department or district following its construction?

*(2) When was it last pumped: (~~(-19)~~)

Yes No Don't know

*(3) Are there any defects in the operation of the (~~septic~~) on-site sewage system?

*(4) When was it last inspected? (~~(-19)~~)

By Whom:

Don't know

Don't know

*(5) For how many bedrooms was the on-site sewage system approved (~~for~~)?

..... bedrooms

Yes No Don't know

~~*(E-Do)~~ E. Are all plumbing fixtures, including laundry drain, (~~go~~) connected to the (~~septic/sewer~~) sewer/on-site sewage system? If no, please explain:

Yes No Don't know

*F. (~~Are you aware of~~) Have there been any changes or repairs to the (~~septic~~) on-site sewage system?

Yes No Don't know

G. Is the (~~septic tank~~) on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

Yes No Don't know

H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain.

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

Yes No Don't know

4. STRUCTURAL

*A. Has the roof leaked? If yes, has it been repaired?

Yes No Don't know

*B. Has the basement flooded or leaked?

Yes No Don't know

*C. Have there been any conversions, additions, or remodeling?

Yes No Don't know

~~*(1-)~~ *(1) If yes, were all building permits obtained?

Yes No Don't know

~~*(2-)~~ *(2) If yes, were all final inspections obtained?

Yes No Don't know

~~(C-)~~ D. Do you know the age of the house? If yes, year of original construction:

Yes No Don't know

.....

[] Yes [] No [] Don't know ((~~*D.~~ Do you know of) *E. Has there been any settling, slippage, or sliding of ((either the house or other structures/ improvements located on the property? If yes, explain.)) the property or its improvements?
(.....))

[] Yes [] No [] Don't know ((~~*E.~~ Do you know of) *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Foundations
- Chimneys
- Doors
- Ceilings
- Pools
- Sidewalks
- Garage Floors
- Other
- Decks
- Interior Walls
- Windows
- Slab Floors
- Hot Tub
- Outbuildings
- Walkways
- Wood Stoves
- Exterior Walls
- Fire Alarm
- Patio
- Driveways
- Sauna
- Fireplaces
- Siding

((~~[]~~) Yes [~~]] No [~~]] Don't know *F. Was a pest or dry rot, structural or "whole house" inspection done? When and by whom was the inspection completed?~~~~

[] Yes [] No [] Don't know *G. Since assuming ownership, has your property had a problem with wood destroying organisms and/or have there been any problems with pest control, infestations, or vermin?))

[] Yes [] No [] Don't know *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?

[] Yes [] No [] Don't know H. During your ownership, has the property had any wood destroying organism or pest infestation?

[] Yes [] No [] Don't know I. Is the attic insulated?

[] Yes [] No [] Don't know J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

((~~(*)~~) *A. If any of the following systems or fixtures are included with the transfer, ((do they have any existing defects:)) are there any defects? If yes, please explain.

[] Yes [] No [] Don't know ((~~*A.~~) Electrical system, including wiring, switches, outlets, and service

[] Yes [] No [] Don't know ((~~*B.~~) Plumbing system, including pipes, faucets, fixtures, and toilets

[] Yes [] No [] Don't know ((~~*C.~~) Hot water tank

[] Yes [] No [] Don't know ((~~*D.~~) Garbage disposal

[] Yes [] No [] Don't know ((~~*E.~~) Appliances

[] Yes [] No [] Don't know ((~~*F.~~) Sump pump

[] Yes [] No [] Don't know ((~~*G.~~) Heating and cooling systems

[] Yes [] No [] Don't know ((~~*H.~~) Security system [] Owned [] Leased

((~~*I.~~) Other

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.) Security system

[] Yes [] No [] Don't know

Yes No Don't know
 Yes No Don't know

Tanks (type):
Satellite dish:
Other:

6. COMMON INTERESTS

Yes No Don't know

A. Is there a Home Owners' Association? Name of Association

Yes No Don't know

B. Are there regular periodic assessments:

\$ per [Month Year

[Other

Yes No Don't know

*C. Are there any pending special assessments?

Yes No Don't know

*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. GENERAL

Yes No Don't know

*A. ~~((Is there any settling, soil, standing water, or))~~ Have there been any drainage problems on the property?

Yes No Don't know

*B. Does the property contain fill material?

Yes No Don't know

*C. Is there any material damage to the property ~~((or any of the structure))~~ from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

Yes No Don't know

D. Is the property in a designated flood plain?

Yes No Don't know

*E. Are there any substances, materials, or products on the property that may be ~~((an))~~ environmental ~~((hazard such as, but not limited to:))~~ concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, ~~((and))~~ or contaminated soil or water ~~((on the subject property))~~?

Yes No Don't know

*G. Has the property ever been used as an illegal drug manufacturing site?

Yes No Don't know

*H. Are there any radio towers in the area that may cause interference with telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

Yes No Don't know

*A. Did you make any alterations to the home? If yes, please describe the alterations:

Yes No Don't know

*B. Did any previous owner make any alterations to the home? If yes, please describe the alterations:

Yes No Don't know

*C. If alterations were made, were permits or variances for these alterations obtained?

~~((&))~~ 2. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

Yes No Don't know

*Are there any other existing material defects affecting ~~((this)) the~~ property ~~((or its value))~~ that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/ we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

II. BUYER'S ACKNOWLEDGMENT

- A. ~~((As buyer(s), I/we acknowledge the))~~ Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects ~~((which)) that~~ are known to ~~((me/us))~~ Buyer or can be known to ~~((me/us))~~ Buyer by utilizing diligent attention and observation.
- B. ~~((Each buyer acknowledges and understands that))~~ The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) ~~((hereby acknowledges receipt of))~~ has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS ((FORM)) DISCLOSURE STATEMENT ARE PROVIDED BY ((THE)) SELLER BASED ON ((THE BASIS OF)) SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME ((OF DISCLOSURE. YOU, THE BUYER,)) SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS((, UNLESS OTHERWISE AGREED, FROM THE SELLER'S DELIVERY OF THIS SELLER'S)) FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND ((YOUR)) THE AGREEMENT BY DELIVERING ((YOUR SEPARATE SIGNED)) A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO ((THE)) SELLER ((UNLESS YOU WAIVE THIS RIGHT OF RESCISSION)) OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS ~~((REAL PROPERTY TRANSFER))~~ DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE

THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The ~~((real property transfer))~~ seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential ~~((real))~~ property. The ~~((real property transfer))~~ seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

Passed by the House April 22, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 201

[Senate Bill 5413]

COMMERCIAL REAL ESTATE—OUT-OF-STATE LICENSEES

AN ACT Relating to allowing out-of-state licensees to practice commercial real estate; amending RCW 18.85.010; and adding a new section to chapter 18.85 RCW.

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

Sec. I. RCW 18.85.010 and 1998 c 46 s 2 are each amended to read as follows:

In this chapter words and phrases have the following meanings unless otherwise apparent from the context:

(1) "Real estate broker," or "broker," means a person, while acting for another for commissions or other compensation or the promise thereof, or a licensee under this chapter while acting in his or her own behalf, who:

(a) Sells or offers for sale, lists or offers to list, buys or offers to buy real estate or business opportunities, or any interest therein, for others;

(b) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate or business opportunities, or any interest therein, for others;

(c) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the manufactured or mobile home is, or will be, located;

(d) Advertises or holds himself or herself out to the public by any oral or printed solicitation or representation that he or she is so engaged; or

(e) Engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results or is calculated to result in any of these acts;

(2) "Real estate salesperson" or "salesperson" means any natural person employed, either directly or indirectly, by a real estate broker, or any person who represents a real estate broker in the performance of any of the acts specified in subsection (1) of this section;

(3) An "associate real estate broker" is a person who has qualified as a "real estate broker" who works with a broker and whose license states that he or she is associated with a broker;

(4) The word "person" as used in this chapter shall be construed to mean and include a corporation, limited liability company, limited liability partnership, or partnership, except where otherwise restricted;

(5) "Business opportunity" shall mean and include business, business opportunity and good will of an existing business or any one or combination thereof;

(6) "Commission" means the real estate commission of the state of Washington;

(7) "Director" means the director of licensing;

(8) "Real estate multiple listing association" means any association of real estate brokers:

(a) Whose members circulate listings of the members among themselves so that the properties described in the listings may be sold by any member for an agreed portion of the commission to be paid; and

(b) Which require in a real estate listing agreement between the seller and the broker, that the members of the real estate multiple listing association shall have the same rights as if each had executed a separate agreement with the seller;

(9) "Clock hours of instruction" means actual hours spent in classroom instruction in any tax supported, public technical college, community college, or any other institution of higher learning or a correspondence course from any of the aforementioned institutions certified by such institution as the equivalent of the required number of clock hours, and the real estate commission may certify courses of instruction other than in the aforementioned institutions; ~~((and))~~

(10) "Incapacitated" means the physical or mental inability to perform the duties of broker prescribed by this chapter; and

(11) "Commercial real estate" means any parcel of real estate in this state other than real estate containing one to four residential units. "Commercial real estate" does not include a single-family residential lot or single-family residential units such as condominiums, townhouses, manufactured homes, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even when those units are part of a larger building or parcel of real estate, unless the property is sold or leased for a commercial purpose.

NEW SECTION. Sec. 2. A new section is added to chapter 18.85 RCW to read as follows:

(1) An out-of-state broker, for a fee, commission, or other valuable consideration, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, may perform those acts that require a license under this chapter, with respect to commercial real estate, provided that the out-of-state broker does all of the following:

(a) Works in cooperation with a Washington real estate broker who holds a valid, active license issued under this chapter;

(b) Enters into a written agreement with the Washington broker that includes the terms of cooperation, oversight by the Washington broker, compensation, and a statement that the out-of-state broker and its agents will agree to adhere to the laws of Washington;

(c) Furnishes the Washington broker with a copy of the out-of-state broker's current license in good standing from any jurisdiction where the out-of-state broker maintains an active real estate license;

(d) Consents to jurisdiction that legal actions arising out of the conduct of the out-of-state broker or its agents may be commenced against the out-of-state broker in the court of proper jurisdiction of any county in Washington where the cause of action arises or where the plaintiff resides;

(e) Includes the name of the Washington broker on all advertising in accordance with RCW 18.85.230(8); and

(f) Deposits all documentation required by this section and records and documents related to the transaction with the Washington broker, for a period of three years after the date the documentation is provided, or the transaction occurred, as appropriate.

(2) An out-of-state salesperson or associate broker may perform those acts that require a real estate salesperson or associate broker license under this chapter with respect to commercial real estate, provided that the out-of-state salesperson or associate broker meets all of the following requirements:

(a) Is licensed with and works under the direct supervision of an out-of-state broker who meets all of the requirements under subsection (1) of this section; and

(b) Provides the Washington broker who is working in cooperation with the out-of-state broker with whom the salesperson or associate broker is associated with a copy of the salesperson's or associate broker's current license in good standing from the jurisdiction where the out-of-state salesperson or associate broker maintains an active real estate license in connection with the out-of-state broker.

(3) A person licensed in a jurisdiction where there is no legal distinction between a real estate broker license and a real estate salesperson license must meet the requirements of subsection (1) of this section before engaging in any activity described in this section that requires a real estate broker license in this state.

Passed by the Senate April 22, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 202

[Substitute Senate Bill 5310]

TITLE INSURANCE AGENTS

AN ACT Relating to bond requirements for title insurance agents; and adding a new section to chapter 48.29 RCW.

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

NEW SECTION. Sec. I. A new section is added to chapter 48.29 RCW to read as follows:

(1) At the time of filing an application for a title insurance agent license, or any renewal or reinstatement of a title insurance agent license, the applicant shall provide satisfactory evidence to the commissioner of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond or fidelity insurance providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering the applicant and each corporate officer, partner, escrow officer, and employee of the applicant conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6); and

(b) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, or some other security approved by the commissioner, unless the fidelity bond or fidelity insurance obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the commissioner of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the commissioner. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee, including but not limited to any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the commissioner and written by an insurer authorized to transact this line of business in the state of Washington. The bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the bond, acting alone or in collusion with others. The bond shall be for the sole benefit of the title insurance agent and under no

circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the title insurance agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(3) For the purposes of this section, "fidelity insurance" means employee dishonesty insurance or its equivalent satisfactory to the commissioner and written by an insurer authorized to transact this line of business in the state of Washington. The insurance shall provide coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the policy of insurance, acting alone or in collusion with others. The insurance shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the insurance company be liable under the insurance to any other party. The insurance shall name the title insurance agent as the named insured and shall protect the named insured against the loss of money or other real or personal property belonging to the named insured, or in which the named insured has a pecuniary interest, or for which the named insured is legally liable or held by the named insured in any capacity, whether the named insured is legally liable therefor or not. The insurance coverage may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(4) The fidelity bond or fidelity insurance, and the surety bond or other form of security approved by the commissioner, shall be kept in full force and effect as a condition precedent to the title insurance agent's authority to transact business in this state, and the title insurance agent shall supply the commissioner with satisfactory evidence thereof upon request.

Passed by the Senate April 26, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 203

[Senate Bill 5211]

COLLECTION AGENCIES

AN ACT Relating to collection agencies; and reenacting and amending RCW 19.16.100.

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

Sec. 1. RCW 19.16.100 and 2001 c 47 s 1 and 2001 c 43 s 1 are each reenacted and amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(2) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.

(3) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies((;)); savings and loan associations((;)); building and loan associations((;)); abstract companies doing an escrow business((;)); real estate brokers((;)); property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities((;)); persons acting under court order((;)); lawyers((;)); insurance companies((;)); credit unions((;)); loan or finance companies((;)); mortgage banks((;)); and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account;

(e) An "out-of-state collection agency" as defined in this chapter; or

(f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(4) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not include any person who is excluded from the definition of the term "debt collector" under the federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

(5) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(6) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.

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

(8) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(9) "Licensee" means any person licensed under this chapter.

(10) "Board" means the Washington state collection agency board.

(11) "Debtor" means any person owing or alleged to owe a claim.

(12) "Commercial claim" means any obligation for payment of money or thing of value arising out of any agreement or contract, express or implied, where the transaction which is the subject of the agreement or contract is not primarily for personal, family, or household purposes.

Passed by the Senate February 14, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 204

[Substitute House Bill 1785]

MENTAL HEALTH COUNSELORS—PRIVILEGED INFORMATION

AN ACT Relating to disclosure of client information by mental health counselors, marriage and family therapists, and social workers; and adding a new section to chapter 18.225 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 18.225 RCW to read as follows:

A person licensed under this chapter shall not disclose the written acknowledgment of the disclosure statement pursuant to RCW 18.225.100, nor any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

(1) With the written authorization of that person or, in the case of death or disability, the person's personal representative;

(2) If the person waives the privilege by bringing charges against the person licensed under this chapter;

(3) In response to a subpoena from the secretary. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;

(4) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.250; or

(5) To any individual if the person licensed under this chapter reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.

Passed by the House March 11, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 205

[Senate Bill 5156]

COMBINED FUND DRIVE COMMITTEE

AN ACT Relating to the combined fund drive; amending RCW 41.04.033; and adding new sections to chapter 41.04 RCW.

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

Sec. 1. RCW 41.04.033 and 2002 c 61 s 4 are each amended to read as follows:

The director of the department of personnel is authorized to adopt rules, after consultation with state agencies, institutions of higher education, and employee organizations, to create a Washington state combined fund drive committee, and for the operation of the Washington state combined fund drive.

NEW SECTION. Sec. 2. A new section is added to chapter 41.04 RCW to read as follows:

The Washington state combined fund drive's powers and duties include but are not limited to the following:

(1) Raising money for charity, and reducing the disruption to government caused by multiple fund drives;

(2) Establishing criteria by which a public or private nonprofit organization may participate in the combined fund drive;

(3) Engaging in or encouraging fund-raising activities including the solicitation and acceptance of charitable gifts, grants, and donations from state employees, retired public employees, corporations, foundations, and other individuals for the benefit of the beneficiaries of the Washington state combined fund drive;

(4) Requesting the appointment of employees from state agencies and institutions of higher education to lead and manage workplace charitable giving campaigns within state government;

(5) Engaging in educational activities, including classes, exhibits, seminars, workshops, and conferences, related to the basic purpose of the combined fund drive;

(6) Engaging in appropriate fund-raising and advertising activities for the support of the administrative duties of the Washington state combined fund drive; and

(7) Charging an administrative fee to the beneficiaries of the Washington state combined fund drive to fund the administrative duties of the Washington state combined fund drive.

Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law.

NEW SECTION. Sec. 3. A new section is added to chapter 41.04 RCW to read as follows:

The Washington state combined fund drive committee may enter into contracts and partnerships with private institutions, persons, firms, or corporations for the benefit of the beneficiaries of the Washington state combined fund drive. Activities of the Washington state combined fund drive

shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law.

Passed by the Senate April 23, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 206

[Substitute House Bill 2196]

AGENCY ALLOTMENTS

AN ACT Relating to the revision and variance reporting of noncash deficit-related state agency allotments; amending RCW 43.88.110; providing an effective date; and declaring an emergency.

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

Sec. I. RCW 43.88.110 and 1997 c 96 s 6 are each amended to read as follows:

This section sets forth the expenditure programs and the allotment and reserve procedures to be followed by the executive branch for public funds.

(1) Allotments of an appropriation for any fiscal period shall conform to the terms, limits, or conditions of the appropriation.

(2) The director of financial management shall provide all agencies with a complete set of operating and capital instructions for preparing a statement of proposed expenditures at least thirty days before the beginning of a fiscal period. The set of instructions need not include specific appropriation amounts for the agency.

(3) Within forty-five days after the beginning of the fiscal period or within forty-five days after the governor signs the omnibus biennial appropriations act, whichever is later, all agencies shall submit to the governor a statement of proposed expenditures at such times and in such form as may be required by the governor.

(4) The office of financial management shall develop a method for monitoring capital appropriations and expenditures that will capture at least the following elements:

(a) Appropriations made for capital projects including transportation projects;

(b) Estimates of total project costs including past, current, ensuing, and future biennial costs;

(c) Comparisons of actual costs to estimated costs;

(d) Comparisons of estimated construction start and completion dates with actual dates;

(e) Documentation of fund shifts between projects.

This data may be incorporated into the existing accounting system or into a separate project management system, as deemed appropriate by the office of financial management.

(5) The office of financial management shall publish agency annual maintenance summary reports beginning in October 1997. State agencies shall

submit a separate report for each major campus or site, as defined by the office of financial management. Reports shall be prepared in a format prescribed by the office of financial management and shall include, but not be limited to: Information describing the number, size, and condition of state-owned facilities; facility maintenance, repair, and operating expenses paid from the state operating and capital budgets, including maintenance staffing levels; the condition of major infrastructure systems; and maintenance management initiatives undertaken by the agency over the prior year. Agencies shall submit their annual maintenance summary reports to the office of financial management by September 1 each year.

(6) The office of financial management, prior to approving allotments for major capital construction projects valued over five million dollars, shall institute procedures for reviewing such projects at the predesign stage that will reduce long-term costs and increase facility efficiency. The procedures shall include, but not be limited to, the following elements:

(a) Evaluation of facility program requirements and consistency with long-range plans;

(b) Utilization of a system of cost, quality, and performance standards to compare major capital construction projects; and

(c) A requirement to incorporate value-engineering analysis and constructability review into the project schedule.

(7) No expenditure may be incurred or obligation entered into for such major capital construction projects including, without exception, land acquisition, site development, predesign, design, construction, and equipment acquisition and installation, until the allotment of the funds to be expended has been approved by the office of financial management. This limitation does not prohibit the continuation of expenditures and obligations into the succeeding biennium for projects for which allotments have been approved in the immediate prior biennium.

(8) If at any time during the fiscal period the governor projects a cash deficit in a particular fund or account as defined by RCW 43.88.050, the governor shall make across-the-board reductions in allotments for that particular fund or account so as to prevent a cash deficit, unless the legislature has directed the liquidation of the cash deficit over one or more fiscal periods. Except for the legislative and judicial branches and other agencies headed by elective officials, the governor shall review the statement of proposed operating expenditures for reasonableness and conformance with legislative intent. The governor may request corrections of proposed allotments submitted by the legislative and judicial branches and agencies headed by elective officials if those proposed allotments contain significant technical errors. Once the governor approves the ~~((statements of))~~ proposed ~~((operating expenditures))~~ allotments, further revisions ~~((shall))~~ may at the request of the office of financial management or upon the agency's initiative be made ~~((only at the beginning of the second fiscal year and must be initiated by the governor))~~ on a quarterly basis and must be accompanied by an explanation of the reasons for significant changes. However, changes in appropriation level authorized by the legislature, changes required by across-the-board reductions mandated by the governor, changes caused by executive increases to spending authority, and changes caused by executive decreases to spending authority for failure to comply with the provisions of

chapter 36.70A RCW may require additional revisions. Revisions shall not be made retroactively. ~~((Revisions caused by executive increases to spending authority shall not be made after June 30, 1987.))~~ However, the governor may assign to a reserve status any portion of an agency appropriation withheld as part of across-the-board reductions made by the governor and any portion of an agency appropriation conditioned on a contingent event by the appropriations act. The governor may remove these amounts from reserve status if the across-the-board reductions are subsequently modified or if the contingent event occurs. The director of financial management shall enter approved statements of proposed expenditures into the state budgeting, accounting, and reporting system within forty-five days after receipt of the proposed statements from the agencies. If an agency or the director of financial management is unable to meet these requirements, the director of financial management shall provide a timely explanation in writing to the legislative fiscal committees.

(9) It is expressly provided that all agencies shall be required to maintain accounting records and to report thereon in the manner prescribed in this chapter and under the regulations issued pursuant to this chapter. Within ninety days of the end of the fiscal year, all agencies shall submit to the director of financial management their final adjustments to close their books for the fiscal year. Prior to submitting fiscal data, written or oral, to committees of the legislature, it is the responsibility of the agency submitting the data to reconcile it with the budget and accounting data reported by the agency to the director of financial management.

~~(10) ((The director of financial management shall monitor agency operating expenditures against the approved statement of proposed expenditures and shall provide the legislature with quarterly explanations of major variances.~~

~~((11))~~ The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not practical or necessary to allot the funds. Allotment control exemptions expire at the end of the fiscal biennium for which they are granted. The director of financial management shall report any exemptions granted under this subsection to the legislative fiscal committees.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the House March 14, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 207

[Engrossed House Bill 1561]

SOCIAL AND HEALTH SERVICES—REPORT ELIMINATION

AN ACT Relating to the elimination of reports to the legislature required of the department of social and health services; amending RCW 43.20B.030, 74.13.036, 74.14C.070, 13.40.030, 70.96A.420, 70.96A.520, 74.13.017, 74.14A.050, and 13.40.430; amending 2001 2nd sp.s. c 7 s 202 (uncodified); amending 2001 2nd sp.s. c 7 s 205 (uncodified); amending 2001 2nd sp.s. c 7 s 207 (uncodified); reenacting and amending RCW 26.44.030; and repealing RCW 71.24.820, 71.24.830, 74.09.310, 74.09.320, and 72.23.450.

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

Sec. 1. RCW 43.20B.030 and 1997 c 130 s 5 are each amended to read as follows:

(1) Except as otherwise provided by law, there will be no collection of overpayments and other debts due the department after the expiration of six years from the date of notice of such overpayment or other debt unless the department has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place. However, any amount due in a case thus extended shall cease to be a debt due the department at the expiration of ten years from the date of the notice of the overpayment or other debt unless a court-ordered remedy would be in effect for a longer period.

(2)((a)) The department, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of any debt due the department if it is no longer cost-effective to pursue. The department shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off of debts.

~~((b) Beginning December 1, 1997, the department shall report by December 1 each year to the commerce and labor committees of the senate and house of representatives, the senate ways and means committee, and the house appropriations committee, or successor committees, the following information:~~

- ~~(i) The cumulative amount of debt due the department;~~
- ~~(ii) The cumulative amount of debt that has been written off by the department as no longer cost-effective to pursue;~~
- ~~(iii) The amount of debt due the department that has accrued in each of the previous five fiscal years; and~~
- ~~(iv) The amount of debt that has been written off in each of the previous five fiscal years as no longer cost-effective to pursue.))~~

Sec. 2. RCW 74.13.036 and 1996 c 133 s 37 are each amended to read as follows:

(1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall develop a plan and procedures, in cooperation with the statewide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

- (a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the child in need of services placement process;
- (b) Procedures for designating department staff responsible for family reconciliation services;
- (c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

(4) ~~((The secretary shall submit a quarterly report to the appropriate local government entities.~~

(5)) The department shall provide an annual report to the legislature not later than December 1 ~~((, indicating))~~ of each year only when it has declined to accept custody of a child from a law enforcement agency or it has received a report of a child being released without placement. The report shall indicate the number of times it has declined to accept custody of a child from a law enforcement agency under chapter 13.32A RCW and the number of times it has received a report of a child being released without placement under RCW 13.32A.060(1)(c). The report shall include the dates, places, and reasons the department declined to accept custody and the dates and places children are released without placement.

Sec. 3. RCW 74.14C.070 and 1995 c 311 s 11 are each amended to read as follows:

The secretary of social and health services, or the secretary's regional designee, may transfer funds appropriated for foster care services to purchase preservation services and other preventive services for children at imminent risk of out-of-home placement or who face a substantial likelihood of out-of-home placement. This transfer may be made in those regions that lower foster care expenditures through efficient use of preservation services and permanency planning efforts. The transfer shall be equivalent to the amount of reduced foster care expenditures and shall be made in accordance with the provisions of this chapter and with the approval of the office of financial management. The ~~((secretary))~~ department shall present an annual report to the legislature regarding any transfers under this section only if transfers occur. The ~~((secretary))~~ department shall include caseload, expenditure, cost avoidance, identified improvements to the out-of-home care system, and outcome data related to the transfer in the report. The ~~((secretary))~~ department shall also include in the report information regarding:

(1) The percent of cases where a child is placed in out-of-home care after the provision of intensive family preservation services or family preservation services;

(2) The average length of time before ((sueh)) the child is placed out-of-home;

(3) The average length of time ((sueh)) the child is placed out-of-home; and

(4) The number of families that refused the offer of either family preservation services or intensive family preservation services.

Sec. 4. RCW 26.44.030 and 1999 c 267 s 20 and 1999 c 176 s 30 are each reenacted and amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(c) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(d) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement

agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department

agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of alleged abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

~~((The department shall provide annual reports to the legislature on the effectiveness of the risk assessment process.))~~

(14) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(15) The department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which: (a) The department believes there is a serious threat of substantial harm to the child; (b) the report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or (c) the department has, after investigation, a report of abuse or neglect that has been founded with regard to a member of the household within three years of receipt of the referral.

Sec. 5. RCW 13.40.030 and 1996 c 232 s 5 are each amended to read as follows:

(1) The secretary shall submit guidelines pertaining to the nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender. Such guidelines shall be submitted to the legislature for its review no later than November 1st of each year. ~~((At the same time the secretary shall submit a report on security at juvenile facilities during the preceding year. The report shall include the number of escapes from each juvenile facility, the most serious offense for which each escapee had been confined, the number and nature of offenses found to have been committed by juveniles while on escape status, the number of authorized leaves granted, the number of failures to comply with leave requirements, the number and nature of offenses committed while on leave, and the number and nature of offenses committed by juveniles while in the community on minimum security status; to the extent this information is available to the secretary.))~~ The department shall include security status definitions in the security guidelines it submits to the legislature pursuant to this section.

(2) The permissible ranges of confinement resulting from a finding of manifest injustice under RCW 13.40.0357 are subject to the following limitations:

(a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;

(b) Where the maximum term in the range is greater than ninety days but not greater than one year, the minimum term in the range may be no less than seventy-five percent of the maximum term in the range; and

(c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range.

Sec. 6. RCW 70.96A.420 and 2001 c 242 s 3 are each amended to read as follows:

(1) The department, in consultation with opiate substitution treatment service providers and counties and cities, shall establish statewide treatment standards for certified opiate substitution treatment programs. The department shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter.

(2) The department, in consultation with opiate substitution treatment programs and counties, shall establish statewide operating standards for certified opiate substitution treatment programs. The department shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and counties to monitor certified and licensed opiate substitution treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall establish criteria for evaluating the compliance of opiate substitution treatment programs with the goals and standards established under this chapter. As a condition of certification, opiate substitution programs shall submit an annual report to the department and county legislative authority, including data as specified by the department necessary for outcome analysis. The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter.

~~((4) Before January 1st of each year, the secretary shall submit a report to the legislature and governor. The report shall include the number of persons enrolled in each treatment program during the period covered by the report, the number of persons who leave each treatment program voluntarily and involuntarily, and an outcome analysis of each treatment program. For purposes of this subsection, "outcome analysis" shall include but not be limited to: The number of people who, as a result of participation in the program, are able to abstain from opiates; reduction in use of opiates; reduction in criminal conduct; achievement of economic independence; and reduction in utilization of health care. The report shall include information on an annual and cumulative basis beginning on July 22, 2001.))~~

Sec. 7. RCW 70.96A.520 and 1997 c 338 s 28 are each amended to read as follows:

The department shall prioritize expenditures for treatment provided under RCW 13.40.165. The department shall provide funds for inpatient and outpatient treatment providers that are the most successful, using the standards developed by the University of Washington under section 27, chapter 338, Laws of 1997. The department may consider variations between the nature of the programs provided and clients served but must provide funds first for those programs that demonstrate the greatest success in treatment within categories of treatment and the nature of the persons receiving treatment.

~~((The department shall, not later than January 1st of each year, provide a report to the governor and the legislature on the success rates of programs funded under this section.))~~

Sec. 8. RCW 74.13.017 and 2001 c 265 s 2 are each amended to read as follows:

The department shall undertake the process of accreditation with the goal of completion by July 2006. ~~((The department, in conjunction with a national independent accreditation entity, shall report to the appropriate legislative committees its progress towards complete accreditation on an annual basis, starting December 2001.))~~

Sec. 9. RCW 74.14A.050 and 2001 c 255 s 1 are each amended to read as follows:

The secretary shall:

(1)(a) Consult with relevant qualified professionals to develop a set of minimum guidelines to be used for identifying all children who are in a state-assisted support system, whether at-home or out-of-home, who are likely to need long-term care or assistance, because they face physical, emotional, medical, mental, or other long-term challenges;

(b) The guidelines must, at a minimum, consider the following criteria for identifying children in need of long-term care or assistance:

- (i) Placement within the foster care system for two years or more;
- (ii) Multiple foster care placements;
- (iii) Repeated unsuccessful efforts to be placed with a permanent adoptive family;
- (iv) Chronic behavioral or educational problems;
- (v) Repetitive criminal acts or offenses;
- (vi) Failure to comply with court-ordered disciplinary actions and other imposed guidelines of behavior, including drug and alcohol rehabilitation; and
- (vii) Chronic physical, emotional, medical, mental, or other similar conditions necessitating long-term care or assistance;

(2) Develop programs that are necessary for the long-term care of children and youth that are identified for the purposes of this section. Programs must: (a) Effectively address the educational, physical, emotional, mental, and medical needs of children and youth; and (b) incorporate an array of family support options, to individual needs and choices of the child and family. The programs must be ready for implementation by January 1, 1995;

(3) Conduct an evaluation of all children currently within the foster care agency caseload to identify those children who meet the criteria set forth in this section. All children entering the foster care system must be evaluated for identification of long-term needs within thirty days of placement;

(4) As a result of the passage of chapter 232, Laws of 2000, the department is conducting a pilot project to do a comparative analysis of a variety of assessment instruments to determine the most effective tools and methods for evaluation of children. The pilot project may extend through August 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives by September 30, 2001, on the results of the pilot project. The department shall select an assessment instrument that can be implemented within available resources. The department shall complete statewide implementation by December 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives on how the use of the selected assessment instrument has affected department policies, by no later than December 31, 2002, December 31, 2004, and December 31, 2006;

(5) Use the assessment tool developed pursuant to subsection (4) of this section in making out-of-home placement decisions for children;

~~(6) ((By region, report to the legislature on the following using aggregate data every six months beginning December 31, 2000:~~

~~(a) The number of children evaluated during the first thirty days of placement as required in subsection (3) of this section;~~

~~(b) The tool or tools used to evaluate children, including the content of the tool and the method by which the tool was validated;~~

~~(c) The findings from the evaluation regarding the children's needs;~~

~~(d) How the department used the results of the evaluation to provide services to the foster child to meet his or her needs; and~~

~~(e) Whether and how the evaluation results assisted the department in providing appropriate services to the child, matching the child with an~~

~~appropriate care provider early on in the child's placement and achieving the child's permanency plan in a timely fashion;~~

~~(7))~~ Each region of the department shall make the appropriate number of referrals to the foster care assessment program to ensure that the services offered by the program are used to the extent funded pursuant to the department's contract with the program. The department shall report to the legislature by November 30, 2000, on the number of referrals, by region, to the foster care assessment program. If the regions are not referring an adequate number of cases to the program, the department shall include in its report an explanation of what action it is or has taken to ensure that the referrals are adequate;

~~((8))~~ (7) The department shall report to the legislature by December 15, 2000, on how it will use the foster care assessment program model to assess children as they enter out-of-home care;

~~((9))~~ (8) The department is to accomplish the tasks listed in subsections ~~(4)~~ through ~~((8))~~ (7) of this section within existing resources;

~~((10))~~ (9) Study and develop a comprehensive plan for the evaluation and identification of all children and youth in need of long-term care or assistance, including, but not limited to, the mentally ill, developmentally disabled, medically fragile, seriously emotionally or behaviorally disabled, and physically impaired;

~~((11))~~ (10) Study and develop a plan for the children and youth in need of long-term care or assistance to ensure the coordination of services between the department's divisions and between other state agencies who are involved with the child or youth;

~~((12))~~ (11) Study and develop guidelines for transitional services, between long-term care programs, based on the person's age or mental, physical, emotional, or medical condition; and

~~((13))~~ (12) Study and develop a statutory proposal for the emancipation of minors.

Sec. 10. 2001 2nd sp.s. c 7 s 202 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--CHILDREN AND FAMILY SERVICES PROGRAM

General Fund--State Appropriation (FY 2002)	\$225,789,000
General Fund--State Appropriation (FY 2003)	\$239,013,000
General Fund--Federal Appropriation	\$372,408,000
General Fund--Private/Local Appropriation	\$400,000
Public Safety and Education Account--	
State Appropriation	\$987,000
Violence Reduction and Drug Enforcement Account--	
State Appropriation	\$5,702,000
TOTAL APPROPRIATION	\$844,299,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,237,000 of the fiscal year 2002 general fund--state appropriation, \$2,288,000 of the fiscal year 2003 general fund--state appropriation, and \$1,590,000 of the general fund--federal appropriation are provided solely for the category of services titled "intensive family preservation services."

(2) \$685,000 of the general fund--state fiscal year 2002 appropriation and \$701,000 of the general fund--state fiscal year 2003 appropriation are provided to contract for the operation of one pediatric interim care facility. The facility shall provide residential care for up to thirteen children through two years of age. Seventy-five percent of the children served by the facility must be in need of special care as a result of substance abuse by their mothers. The facility shall also provide on-site training to biological, adoptive, or foster parents. The facility shall provide at least three months of consultation and support to parents accepting placement of children from the facility. The facility may recruit new and current foster and adoptive parents for infants served by the facility. The department shall not require case management as a condition of the contract.

(3) \$524,000 of the general fund--state fiscal year 2002 appropriation and \$536,000 of the general fund--state fiscal year 2003 appropriation are provided for up to three nonfacility-based programs for the training, consultation, support, and recruitment of biological, foster, and adoptive parents of children through age three in need of special care as a result of substance abuse by their mothers, except that each program may serve up to three medically fragile nonsubstance-abuse-affected children. In selecting nonfacility-based programs, preference shall be given to programs whose federal or private funding sources have expired or that have successfully performed under the existing pediatric interim care program.

(4) \$1,260,000 of the fiscal year 2002 general fund--state appropriation, \$1,248,000 of the fiscal year 2003 general fund--state appropriation, and \$4,196,000 of the violence reduction and drug enforcement account appropriation are provided solely for the family policy council and community public health and safety networks. The funding level for the family policy council and community public health and safety networks represents a 25 percent reduction below the funding level for the 1999-2001 biennium. Funding levels shall be reduced 25 percent for both the family policy council and network grants. Reductions to network grants shall be allocated so as to maintain current funding levels, to the greatest extent possible, for projects with the strongest evidence of positive outcomes and for networks with substantial compliance with contracts for network grants.

(5) \$2,215,000 of the fiscal year 2002 general fund--state appropriation, \$4,394,000 of the fiscal year 2003 general fund--state appropriation, and \$5,604,000 of the general fund--federal appropriation are provided solely for reducing the average caseload level per case-carrying social worker. Average caseload reductions are intended to increase the amount of time social workers spend in direct contact with the children, families, and foster parents involved with their open cases. The department shall use some of the funds provided in several local offices to increase staff that support case-carrying social workers in ways that will allow social workers to increase direct contact time with children, families, and foster parents. To achieve the goal of reaching an average caseload ratio of 1:24 by the end of fiscal year 2003, the department shall develop a plan for redeploying 30 FTEs to case-carrying social worker and support positions from other areas in the children and family services budget. The FTE redeployment plan shall be submitted to the fiscal committees of the legislature by December 1, 2001.

(6) \$1,000,000 of the fiscal year 2002 general fund--state appropriation and \$1,000,000 of the fiscal year 2003 general fund--state appropriation are provided solely for increasing foster parent respite care services that improve the retention of foster parents and increase the stability of foster placements. ~~((The department shall report quarterly to the appropriate committees of the legislature progress against appropriate baseline measures for foster parent retention and stability of foster placements.))~~

(7) \$1,050,000 of the general fund--federal appropriation is provided solely for increasing kinship care placements for children who otherwise would likely be placed in foster care. These funds shall be used for extraordinary costs incurred by relatives at the time of placement, or for extraordinary costs incurred by relatives after placement if such costs would likely cause a disruption in the kinship care placement. \$50,000 of the funds provided shall be contracted to the Washington institute for public policy to conduct a study of kinship care placements. The study shall examine the prevalence and needs of families who are raising related children and shall compare services and policies of Washington state with other states that have a higher rate of kinship care placements in lieu of foster care placements. The study shall identify possible changes in services and policies that are likely to increase appropriate kinship care placements.

(8) \$3,386,000 of the fiscal year 2002 general fund--state appropriation, \$7,671,000 of the fiscal year 2003 general fund--state appropriation, and \$20,819,000 of the general fund--federal appropriation are provided solely for increases in the cost per case for foster care and adoption support. \$16,000,000 of the general fund--federal amount shall remain unallotted until the office of financial management approves a plan submitted by the department to achieve a higher rate of federal earnings in the foster care program. That plan shall also be submitted to the fiscal committees of the legislature and shall indicate projected federal revenue compared to actual fiscal year 2001 levels. Within the amounts provided for foster care, the department shall increase the basic rate for foster care to an average of \$420 per month on July 1, 2001, and to an average of \$440 per month on July 1, 2002. The department shall use the remaining funds provided in this subsection to pay for increases in the cost per case for foster care and adoption support. The department shall seek to control rate increases and reimbursement decisions for foster care and adoption support cases such that the cost per case for family foster care, group care, receiving homes, and adoption support does not exceed the amount assumed in the projected caseload expenditures plus the amounts provided in this subsection.

(9) \$1,767,000 of the general fund--state appropriation for fiscal year 2002, \$2,461,000 of the general fund--state appropriation for fiscal year 2003, and \$1,485,000 of the general fund--federal appropriation are provided solely for rate and capacity increases for child placing agencies. Child placing agencies shall increase their capacity by 15 percent in fiscal year 2002 and 30 percent in fiscal year 2003.

(10) The department shall provide secure crisis residential facilities across the state in a manner that: (a) Retains geographic provision of these services; and (b) retains beds in high use areas.

(11) \$125,000 of the general fund--state appropriation for fiscal year 2002 and \$125,000 of the general fund--state appropriation for fiscal year 2003 are

provided solely for a foster parent retention program. This program is directed at foster parents caring for children who act out sexually, as described in House Bill No. 1525 (foster parent retention program).

Sec. 11. 2001 2nd sp.s. c 7 s 205 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--
DEVELOPMENTAL DISABILITIES PROGRAM**

(1) COMMUNITY SERVICES

General Fund--State Appropriation (FY 2002).	\$231,693,000
General Fund--State Appropriation (FY 2003).	\$242,347,000
General Fund--Federal Appropriation	\$396,151,000
Health Services Account--State	
Appropriation.	\$741,000
TOTAL APPROPRIATION	\$870,932,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The health services account appropriation and \$753,000 of the general fund--federal appropriation are provided solely for health care benefits for home care workers with family incomes below 200 percent of the federal poverty level who are employed through state contracts for twenty hours per week or more. Premium payments for individual provider home care workers shall be made only to the subsidized basic health plan. Home care agencies may obtain coverage either through the basic health plan or through an alternative plan with substantially equivalent benefits.

(b) \$902,000 of the general fund--state appropriation for fiscal year 2002, \$3,372,000 of the general fund--state appropriation for fiscal year 2003, and \$4,056,000 of the general fund--federal appropriation are provided solely for community services for residents of residential habilitation centers (RHCs) who are able to be adequately cared for in community settings and who choose to live in those community settings. The department shall ensure that the average cost per day for all program services other than start-up costs shall not exceed \$280. If the number and timing of residents choosing to move into community settings is not sufficient to achieve the RHC cottage consolidation plan assumed in the appropriations in subsection (2) of this section, the department shall transfer sufficient appropriations from this subsection to subsection (2) of this section to cover the added costs incurred in the RHCs. The department shall report to the appropriate committees of the legislature, within 45 days following each fiscal year quarter, the number of residents moving into community settings and the actual expenditures for all community services to support those residents.

(c) \$1,440,000 of the general fund--state appropriation for fiscal year 2002, \$3,041,000 of the general fund--state appropriation for fiscal year 2003, and \$4,311,000 of the general fund--federal appropriation are provided solely for expanded community services for persons with developmental disabilities who also have community protection issues or are diverted or discharged from state psychiatric hospitals. The department shall ensure that the average cost per day for all program services other than start-up costs shall not exceed \$275. The department shall report to the appropriate committees of the legislature, within 45 days following each fiscal year quarter, the number of persons served with

these additional community services, where they were residing, what kinds of services they were receiving prior to placement, and the actual expenditures for all community services to support these clients.

(d) \$1,005,000 of the general fund--state appropriation for fiscal year 2002, \$2,262,000 of the general fund--state appropriation for fiscal year 2003, and \$2,588,000 of the general fund--federal appropriation are provided solely for increasing case/resource management resources to improve oversight and quality of care for persons enrolled in the medicaid home and community services waiver for persons with developmental disabilities. The department shall not increase total enrollment in home and community based waivers for persons with developmental disabilities except for increases assumed in additional funding provided in subsections (b) and (c) of this section. (~~Prior to submitting to the health care financing authority any additional home and community based waiver request for persons with developmental disabilities, the department shall submit a summary of the waiver request to the appropriate committees of the legislature. The summary shall include eligibility criteria, program description, enrollment projections and limits, and budget and cost effectiveness projections that distinguish the requested waiver from other existing or proposed waivers.~~)

(e) \$1,000,000 of the general fund--state appropriation for fiscal year 2002 and \$1,000,000 of the general fund--state appropriation for fiscal year 2003 are provided solely for employment, or other day activities and training programs, for young adults with developmental disabilities who complete their high school curriculum in 2001 or 2002. These services are intended to assist with the transition to work and more independent living. Funding shall be used to the greatest extent possible for vocational rehabilitation services matched with federal funding. In recent years, the state general fund appropriation for employment and day programs has been underspent. These surpluses, built into the carry forward level budget, shall be redeployed for high school transition services.

(f) \$369,000 of the fiscal year 2002 general fund--state appropriation and \$369,000 of the fiscal year 2003 general fund--state appropriation are provided solely for continuation of the autism pilot project started in 1999.

(g) \$4,049,000 of the general fund--state appropriation for fiscal year 2002, \$1,734,000 of the general fund--state appropriation for fiscal year 2003, and \$5,369,000 of the general fund--federal appropriation are provided solely to increase compensation by an average of fifty cents per hour for low-wage workers providing state-funded services to persons with developmental disabilities. These funds, along with funding provided for vendor rate increases, are sufficient to raise wages an average of fifty cents and cover the employer share of unemployment and social security taxes on the amount of the wage increase. In consultation with the statewide associations representing such agencies, the department shall establish a mechanism for testing the extent to which funds have been used for this purpose, and report the results to the fiscal committees of the legislature by February 1, 2002.

(2) INSTITUTIONAL SERVICES

General Fund--State Appropriation (FY 2002)	\$71,977,000
General Fund--State Appropriation (FY 2003)	\$69,303,000

General Fund--Federal Appropriation	\$145,641,000
General Fund--Private/Local Appropriation	\$10,230,000
TOTAL APPROPRIATION	\$297,151,000

The appropriations in this subsection are subject to the following conditions and limitations: Pursuant to RCW 71A.12.160, if residential habilitation center capacity is not being used for permanent residents, the department may make residential habilitation center vacancies available for respite care and any other services needed to care for clients who are not currently being served in a residential habilitation center and whose needs require staffing levels similar to current residential habilitation center residents. Providing respite care shall not impede the department's ability to consolidate cottages as assumed in the appropriations in this subsection.

(3) PROGRAM SUPPORT

General Fund--State Appropriation (FY 2002)	\$2,601,000
General Fund--State Appropriation (FY 2003)	\$2,623,000
General Fund--Federal Appropriation	\$2,413,000
TOTAL APPROPRIATION	\$7,637,000

The appropriations in this subsection are subject to the following conditions and limitations: \$50,000 of the fiscal year 2002 general fund--state appropriation and \$50,000 of the fiscal year 2003 general fund--state appropriation are provided solely for increasing the contract amount for the southeast Washington deaf and hard of hearing services center due to increased workload.

(4) SPECIAL PROJECTS

General Fund--Federal Appropriation	\$11,995,000
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Sec. 12. 2001 2nd sp.s. c 7 s 207 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--ECONOMIC SERVICES PROGRAM

General Fund--State Appropriation (FY 2002)	\$436,440,000
General Fund--State Appropriation (FY 2003)	\$424,870,000
General Fund--Federal Appropriation	\$1,356,351,000
General Fund--Private/Local Appropriation	\$31,788,000
TOTAL APPROPRIATION	\$2,249,449,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$282,081,000 of the general fund--state appropriation for fiscal year 2002, \$278,277,000 of the general fund--state appropriation for fiscal year 2003, \$1,254,197,000 of the general fund--federal appropriation, and \$29,352,000 of the general fund--local appropriation are provided solely for the WorkFirst program and child support operations. WorkFirst expenditures include TANF grants, diversion services, subsidized child care, employment and training, other WorkFirst related services, allocated field services operating costs, and allocated economic services program administrative costs. Within the amounts provided in this subsection, the department shall:

(a) Continue to implement WorkFirst program improvements that are designed to achieve progress against outcome measures specified in RCW 74.08A.410. Valid outcome measures of job retention and wage progression shall be developed ~~((and reported quarterly to appropriate fiscal and policy committees of the legislature for families who leave assistance, measured after 12 months, 24 months, and 36 months)).~~ An increased attention to job retention and wage progression is necessary to emphasize the legislature's goal that the WorkFirst program succeed in helping recipients gain long-term economic independence and not cycle on and off public assistance. ~~((The wage progression measure shall report the median percentage increase in quarterly earnings and hourly wage after 12 months, 24 months, and 36 months. The wage progression report shall also report the percent with earnings above one hundred percent and two hundred percent of the federal poverty level. The report shall compare former WorkFirst participants with similar workers who did not participate in WorkFirst. The department shall also report the percentage of families who have returned to temporary assistance for needy families after 12 months, 24 months, and 36 months.))~~

(b) Develop informational materials that educate families about the difference between cash assistance and work support benefits. These materials must explain, among other facts, that the benefits are designed to support their employment, that there are no time limits on the receipt of work support benefits, and that immigration or residency status will not be affected by the receipt of benefits. These materials shall be posted in all community service offices and distributed to families. Materials must be available in multiple languages. When a family leaves the temporary assistance for needy families program, receives cash diversion assistance, or withdraws a temporary assistance for needy families application, the department of social and health services shall educate them about the difference between cash assistance and work support benefits and offer them the opportunity to begin or to continue receiving work support benefits, so long as they are eligible. The department shall provide this information through in-person interviews, over the telephone, and/or through the mail. Work support benefits include food stamps, medicaid for all family members, medicaid or state children's health insurance program for children, and child care assistance. ~~((The department shall report annually to the legislature the number of families who have had exit interviews, been reached successfully by phone, and been sent mail. The report shall also include the percentage of families who elect to continue each of the benefits and the percentage found ineligible by each substantive reason code. A substantive reason code shall not be "other." The report shall identify barriers to informing families about work support benefits and describe existing and future actions to overcome such barriers.))~~

(c) From the amounts provided in this subsection, provide \$50,000 from the general fund--state appropriation for fiscal year 2002 and \$50,000 from the general fund--state appropriation for fiscal year 2003 to the Washington institute for public policy for continuation of the WorkFirst evaluation database.

(d) Submit a report by December 1, 2001, to the fiscal committees of the legislature containing a spending plan for the WorkFirst program. The plan shall identify how spending levels in the 2001-2003 biennium will be adjusted by

June 30, 2003, to be sustainable within available federal grant levels and the carryforward level of state funds.

(2) \$48,341,000 of the general fund--state appropriation for fiscal year 2002 and \$48,341,000 of the general fund--state appropriation for fiscal year 2003 are provided solely for cash assistance and other services to recipients in the general assistance--unemployable program. Within these amounts, the department may expend funds for services that assist recipients to reduce their dependence on public assistance, provided that expenditures for these services and cash assistance do not exceed the funds provided.

(3) \$5,632,000 of the general fund--state appropriation for fiscal year 2002 and \$5,632,000 of the general fund--state appropriation for fiscal year 2003 are provided solely for the food assistance program for legal immigrants. The level of benefits shall be equivalent to the benefits provided by the federal food stamp program.

(4) \$48,000 of the general fund--state appropriation for fiscal year 2002 is provided solely to implement chapter 111, Laws of 2001 (veterans/Philippines).

(5) The department shall apply the provisions of RCW 74.04.005(10) to simplify resource eligibility policy, make such policy consistent with other federal public assistance programs, and achieve the budgetary savings assumed in this section.

Sec. 13. RCW 13.40.430 and 1993 c 373 s 2 are each amended to read as follows:

The ~~((department))~~ administrator for the courts shall ~~((within existing funds))~~ collect such data as may be necessary to monitor any disparity in processing or disposing of cases involving juvenile offenders due to economic, gender, geographic, or racial factors that may result from implementation of section 1, chapter 373, Laws of 1993. ~~((Beginning December 1, 1993, the department shall report annually to the legislature on economic, gender, geographic, or racial disproportionality in the rates of arrest, detention, trial, treatment, and disposition in the state's juvenile justice system. The report shall cover the preceding calendar year. The annual report shall identify the causes of such disproportionality and shall specifically point out any economic, gender, geographic, or racial disproportionality resulting from implementation of section 1, chapter 373, Laws of 1993.))~~ The administrator for the courts may, in consultation with juvenile courts, determine a format for the collection of such data and a schedule for the reporting of such data and shall keep a minimum of five years of data at any given time.

NEW SECTION. Sec. 14. The following acts or parts of acts are each repealed:

(1) RCW 71.24.820 (Mental health system review—Implementation of status reports) and 2001 c 334 s 3; and

(2) RCW 71.24.830 (Mental health system review—Content of status reports) and 2001 c 334 s 4.

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

(1) RCW 74.09.310 (Chemical dependency treatment—Provision of birth control services, information, and counseling—Report) and 1998 c 314 s 34;

- (2) RCW 74.09.320 (Chemical dependency treatment—Provision of birth control services, information, and counseling—Report) and 1998 c 314 s 35; and
 (3) RCW 72.23.450 (Annual report to the legislature) and 2000 c 22 s 8.

Passed by the House April 21, 2003.

Passed by the Senate April 14, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 208

[House Bill 1635]

PUBLIC ASSISTANCE—REPORTING REQUIREMENTS

AN ACT Relating to income and resources reporting requirements under the public assistance program; and amending RCW 74.04.300.

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

Sec. 1. RCW 74.04.300 and 1998 c 79 s 7 are each amended to read as follows:

If a recipient receives public assistance and/or food stamps or food stamp benefits transferred electronically for which the recipient is not eligible, or receives public assistance and/or food stamps or food stamp benefits transferred electronically in an amount greater than that for which the recipient is eligible, the portion of the payment to which the recipient is not entitled shall be a debt due the state recoverable under RCW 43.20B.030 and 43.20B.620 through 43.20B.645. It shall be the duty of recipients of ~~((public assistance and/or food stamps or food stamp))~~ cash benefits ((transferred electronically)) to notify the department ~~((within twenty days of the receipt or possession of all income or resources not previously declared to the department))~~ of changes to earned income as defined in RCW 74.04.005(11). It shall be the duty of recipients of cash benefits to notify the department of changes to liquid resources as defined in RCW 74.04.005(10) that would result in ineligibility for cash benefits. It shall be the duty of recipients of food benefits to report changes in income that result in ineligibility for food benefits. All recipients shall report changes required in this section by the tenth of the month following the month in which the change occurs. The department shall make a determination of eligibility within ten days from the date it receives the reported change from the recipient. The department shall adopt rules consistent with federal law and regulations for additional reporting requirements. The department shall advise applicants for assistance that failure to report as required, failure to reveal resources or income, and false statements will result in recovery by the state of any overpayment and may result in criminal prosecution.

Passed by the House April 21, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 209

[Substitute Senate Bill 5824]

RURAL FIRE PROTECTION DISTRICTS—EMERGENCY SERVICES

AN ACT Relating to allowing rural fire protection districts to contract with cities for ambulance services and impose a monthly utility service charge on each developed residential property located in the fire protection district; and adding a new section to chapter 52.12 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 52.12 RCW to read as follows:

(1) A rural fire protection district organized under this title may enter into a contract pursuant to chapter 39.34 RCW with a contiguous city for the furnishing by the city to the fire protection district or districts of emergency medical services in the form of ambulance services, provided that the contract may not provide for the establishment of any ambulance service that would compete with any existing, private ambulance service. The fire protection district or districts may impose a monthly utility service charge on each developed residential property located in the portion of the fire protection district or districts served pursuant to the contract in an amount equal to the amount imposed by the city on similar city developed residential property. Developed residential property includes single-family residences, apartments, manufactured homes, mobile homes, and trailers available for occupancy for a continuous period greater than thirty days. A fire protection district or districts may contract with the contiguous city or with any other governmental entity pursuant to chapter 39.34 RCW for the billing and collection services related to the monthly utility service charge for ambulance service. A city providing ambulance services to a fire protection district or districts under a contract entered into pursuant to this subsection may charge individuals actually using the ambulance services reasonable rates and charges for the ambulance services.

(2) For purposes of this section, "rural" means a population density within the fire protection district or districts as a whole of ten or fewer persons per square mile.

Passed by the Senate March 12, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 210

[Substitute Senate Bill 5787]

LEACHING TESTS

AN ACT Relating to the use of a leaching test in state water quality certifications; adding new sections to chapter 90.48 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 90.48 RCW to read as follows:

(1) In order to ensure that construction projects involving the use of fill material do not pose a threat to water quality, the department may require that the suitability of potential fill material be evaluated using a leaching test

included in the soil clean-up rules adopted by the department under chapter 70.105D RCW in any water quality certification issued under section 401 of the federal clean water act and in any administrative order issued under this chapter, where such certification or administrative order authorizes the placement of fill material, some or all of which will be placed in waters of the state. Any such requirement imposed by the department in a water quality certification or administrative order issued prior to the effective date of this section is ratified and approved by the legislature as a valid and reliable method for determining concentrations of chemical constituents that can be present in fill material without posing an unacceptable risk of violating water quality standards, and shall be in effect as imposed by the department for all work not completed by June 1, 2003.

(2) Nothing in this section limits, in any way, the department's authority under this chapter.

NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW to read as follows:

The department shall identify the leaching tests utilized for evaluating the potential impacts to water quality in situations where fill material is imported. The tests may include those identified in the soil clean-up rules adopted by the department under chapter 70.105D RCW. Within existing resources, the department shall assess whether this list of leaching tests provides appropriate methods for analyzing water quality impacts for all types of projects and in all circumstances where fill material is imported. The department shall also identify any gaps in leaching test methodology. The department shall report both the leaching test list and the list of test methodology gaps to the appropriate committees of the legislature by December 31, 2003.

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 by the Senate April 23, 2003.

Passed by the House April 18, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 211

[Engrossed Senate Bill 5210]

ELECTRICIANS

AN ACT Relating to electrician certification; and amending RCW 19.28.191.

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

Sec. 1. RCW 19.28.191 and 2002 c 249 s 5 are each amended to read as follows:

(1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the master journeyman electrician, journeyman electrician, master specialty electrician, or specialty electrician certificate of competency.

(a) Before July 1, 2005, an applicant who possesses a valid journeyman electrician certificate of competency in effect for the previous four years and a

valid general administrator's certificate may apply for a master journeyman electrician certificate of competency without examination.

(b) Before July 1, 2005, an applicant who possesses a valid specialty electrician certificate of competency, in the specialty applied for, for the previous two years and a valid specialty administrator's certificate, in the specialty applied for, may apply for a master specialty electrician certificate of competency without examination.

(c) To be eligible to take the examination for a master journeyman electrician certificate of competency the applicant must have possessed a valid journeyman electrician certificate of competency for four years.

(d) To be eligible to take the examination for a master specialty electrician certificate of competency the applicant must have possessed a valid specialty electrician certificate of competency, in the specialty applied for, for two years.

(e) To be eligible to take the examination for a journeyman certificate of competency the applicant must have:

(i) Worked in the electrical construction trade for a minimum of eight thousand hours, of which four thousand hours shall be in industrial or commercial electrical installation under the supervision of a master journeyman electrician or journeyman electrician and not more than a total of four thousand hours in all specialties under the supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Specialty electricians with less than a four thousand hour work experience requirement cannot credit the time required to obtain that specialty towards qualifying to become a journeyman electrician; or

(ii) Successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade.

(f) To be eligible to take the examination for a specialty electrician certificate of competency the applicant must have:

(i) Worked in the residential (as specified in WAC 296-46A-930(2)(a)), pump and irrigation (as specified in WAC 296-46A-930(2)(b)(i)), sign (as specified in WAC 296-46A-930(2)(c)), limited energy (as specified in WAC 296-46A-930(2)(e)(i)), nonresidential maintenance (as specified in WAC 296-46A-930(2)(f)(i)), (~~restricted nonresidential maintenance as determined by the department in rule,~~) or other new nonresidential specialties as determined by the department in rule under the supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty for a minimum of four thousand hours; or

(ii) Worked in the appliance repair specialty as determined by the department in rule, restricted nonresidential maintenance as determined by the department in rule, or a specialty other than the designated specialties in (f)(i) of this subsection for a minimum of the initial ninety days, or longer if set by rule by the department. The restricted nonresidential maintenance specialty is limited to a maximum of 277 volts and 20 amperes for lighting branch circuits and/or a maximum of 250 volts and 60 amperes for other circuits, but excludes the replacement or repair of circuit breakers. The initial period must be spent under one hundred percent supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's

specialty, or specialty electrician working in that electrician's specialty. After this initial period, a person may take the specialty examination. If the person passes the examination, the person may work unsupervised for the balance of the minimum hours required for certification. A person may not be certified as a specialty electrician in the appliance repair specialty or in a specialty other than the designated specialties in (f)(i) of this subsection, however, until the person has worked a minimum of two thousand hours in that specialty, or longer if set by rule by the department; or

(iii) Successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade.

(g) Any applicant for a journeyman electrician certificate of competency who has successfully completed a two-year program in the electrical construction trade at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW may substitute up to two years of the technical or trade school program for two years of work experience under a master journeyman electrician or journeyman electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to apply armed service work experience towards qualification to take the examination for the journeyman electrician certificate of competency.

(h) An applicant for a specialty electrician certificate of competency who, after January 1, 2000, has successfully completed a two-year program in the electrical construction trade at a public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW, may substitute up to one year of the technical or trade school program for one year of work experience under a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Any applicant who has received training in the electrical construction trade in the armed services of the United States may be eligible to apply armed service work experience towards qualification to take the examination for an appropriate specialty electrician certificate of competency.

(i) The department must determine whether hours of training and experience in the armed services or school program are in the electrical construction trade and appropriate as a substitute for hours of work experience. The department must use the following criteria for evaluating the equivalence of classroom electrical training programs and work in the electrical construction trade:

(i) A two-year electrical training program must consist of three thousand or more hours.

(ii) In a two-year electrical training program, a minimum of two thousand four hundred hours of student/instructor contact time must be technical electrical instruction directly related to the scope of work of the electrical specialty. Student/instructor contact time includes lecture and in-school lab.

(iii) The department may not allow credit for a program that accepts more than one thousand hours transferred from another school's program.

(iv) Electrical specialty training school programs of less than two years will have all of the above student/instructor contact time hours proportionately reduced. Such programs may not apply to more than fifty percent of the work experience required to attain certification.

(v) Electrical training programs of less than two years may not be credited towards qualification for journeyman electrician unless the training program is used to gain qualification for a four thousand hour electrical specialty.

(j) No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination.

(3) No noncertified individual may work unsupervised more than one year beyond the date when the trainee would be eligible to test for a certificate of competency if working on a full-time basis after original application for the trainee certificate. For the purposes of this section, full-time basis means two thousand hours.

Passed by the Senate March 12, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 212

[Substitute House Bill 1269]

PEST INSPECTORS

AN ACT Relating to regulating structural pest inspectors; amending RCW 15.58.030, 15.58.040, 15.58.150, 15.58.210, 15.58.233, 15.58.460, 15.58.465, and 15.58.470; adding new sections to chapter 15.58 RCW; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 15.58.030 and 2000 c 96 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) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in

Washington state. Complete wood destroying organism inspections include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspection, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

~~((5))~~ (5) "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))~~ (6) "Department" means the Washington state department of agriculture.

~~((6))~~ (7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

~~((7))~~ (8) "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))~~ (9) "Director" means the director of the department or a duly authorized representative.

~~((9))~~ (10) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

~~((10))~~ (11) "EPA" means the United States environmental protection agency.

~~((11))~~ (12) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

~~((12))~~ (13) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

~~((13))~~ (14) "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))~~ (15) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

~~((15))~~ (16) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

~~((16))~~ (17) "Inert ingredient" means an ingredient which is not an active ingredient.

~~((17))~~ (18) "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 by named.

~~((18))~~ (19) "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))~~ (20) "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))~~ (21) "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))~~ (22) "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.

~~((22))~~ (23) "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.

~~((23))~~ (24) "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.

~~((24))~~ (25) "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.

~~((25))~~ (26) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

~~((26))~~ (27) "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.

~~((27))~~ (28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((28))~~ (29) "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.

~~((29))~~ (30) "Pest control consultant" means any individual who ~~((acts as a structural pest 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.

~~((30))~~ (31) "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.

~~((31))~~ (32) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act.

~~((32))~~ (33) "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.

~~((33))~~ (34) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

~~((34))~~ (35) "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.

~~((35))~~ (36) "Registrant" means the person registering any pesticide under the provisions of this chapter.

~~((36))~~ (37) "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.

~~((37))~~ (38) "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.

~~((38))~~ (39) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

(40) "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.

~~((39))~~ (41) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

~~((40))~~ (42) "Structural pest inspector" means any individual who performs the service of ~~((inspecting a building for))~~ conducting a complete wood destroying ~~((organisms, their damage, or conditions conducive to their infestation))~~ organism inspection or a specific wood destroying organism inspection.

~~((41))~~ (43) "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.

~~((42))~~ (44) "Weed" means any plant which grows where not wanted.

~~((43))~~ (45) "Wood destroying organism" means insects or fungi that consume, excavate, develop in, or otherwise modify the integrity of wood or wood products. Wood destroying organism includes, but is not limited to, carpenter ants, moisture ants, subterranean termites, dampwood termites, beetles in the family Anobiidae, and wood decay fungi (wood rot).

(46) "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.

Sec. 2. RCW 15.58.040 and 2000 c 96 s 8 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 1 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 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;

(m) Fixing and collecting examination fees; and

(n) Requiring individuals to earn recertification credits in the classifications in which they are licensed.

(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. 3. RCW 15.58.150 and 2000 c 96 s 6 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 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 act as, or advertise that ~~((the person is a licensed))~~ they perform the services of, a structural pest inspector without having a ~~((valid pest control consultant))~~ license ~~((in the category of))~~ to act as a structural pest inspector;

(h) For a business to conduct one or more complete wood destroying organism inspections without first having obtained a structural pest inspection company license from the department.

Sec. 4. RCW 15.58.210 and 2000 c 96 s 9 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 inspector without first obtaining from the director a pest control consultant license in the special category of structural pest 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 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 inspector licensing requirement.))~~

NEW SECTION. **Sec. 5.** A new section is added to chapter 15.58 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, no individual may perform services as a structural pest inspector or advertise that they perform services of a structural pest inspector without obtaining a structural pest inspector license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of forty-five dollars.

(2) The following are exempt from the application fee requirement of subsection (1) of this section when acting within the authorities of their existing licenses issued under chapter 15.58 or 17.21 RCW: Licensed pest control consultants; licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators.

(3) The following are exempt from the structural pest inspector licensing requirement: Individuals inspecting for damage caused by wood destroying organisms if the inspections are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of the 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 inspector licensing requirement.

(4) Persons holding a valid license to act as a structural pest inspector on the effective date of this section are exempt from this requirement until expiration of that license.

(5) A structural pest inspector license is not valid for conducting a complete wood destroying organism inspection unless the inspector owns or is employed by a business with a structural pest inspection company license.

NEW SECTION. Sec. 6. A new section is added to chapter 15.58 RCW to read as follows:

The director shall require each applicant for a structural pest inspector license to demonstrate to the director the applicant's knowledge of applicable laws and regulations; structural pest identification and damage; and conditions conducive to the development of wood destroying organisms by satisfactorily passing a written examination for the classifications for which the applicant has applied prior to issuing the license.

Sec. 7. RCW 15.58.233 and 2000 c 96 s 7 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~~) **perform in those areas licensed.**

(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) 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) 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.

NEW SECTION. Sec. 8. A new section is added to chapter 15.58 RCW to read as follows:

It is unlawful for any business to conduct complete wood destroying organism inspections without having obtained a company license from the director. Application for a structural pest inspection company license must be on a form prescribed by the director. The application must include the following information:

- (1) The full name of the individual applying for such license;
- (2) The full name of the company that employs structural pest inspectors;

(3) The physical and mailing addresses of the company, and the telephone and facsimile numbers, if available;

(4) A list of the names of the structural pest inspectors who are employed by the company;

(5) The unique business identifier for the company; and

(6) Any other necessary information prescribed by the director.

Any changes to the information on the prescribed structural pest inspection company license form shall be reported by the company to the department within thirty days of the change.

Sec. 9. RCW 15.58.460 and 2000 c 96 s 3 are each amended 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.)) The director shall not issue a license to any individual who intends to act as a structural pest inspector until evidence of financial responsibility, required and described in subsection (2) of this section, is furnished by the applicant or the business employing the applicant. Licensed commercial applicators that have met the requirements of RCW 17.21.160 and their licensed commercial operator employees are exempt from this financial responsibility requirement when performing specific wood destroying organism inspections. Public employees licensed to perform structural pest inspections are exempt from this licensing requirement when acting within their official capacities.~~

~~(2) Evidence of financial responsibility, consisting of one of the following, must be provided and maintained as a condition of licensure:~~

~~(a) An errors and omissions insurance policy, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(a);~~

~~(b) A surety bond, the amounts and terms of which are consistent with the requirements of RCW 15.58.465(1)(b);~~

~~(c) A surety bond and an errors and omissions insurance policy, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(c);~~

~~(d) An assigned account the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(d);~~

~~(e) Any other type of evidence of financial responsibility identified by the director by rule that provides coverage equivalent to that provided by any of (a) through (d) of this subsection.~~

~~(3) Evidence of financial responsibility must be supplied to the department on a financial responsibility insurance certificate, surety bond form, assigned account form, or other form prescribed by the director with regard to evidence provided under subsection (2)(e) of this section.~~

Sec. 10. RCW 15.58.465 and 2000 c 96 s 4 are each amended 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 RCW 15.58.460, 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.))~~

The following requirements apply to the forms of evidence of financial responsibility required under RCW 15.58.460.

(a) **Errors and Omissions Insurance.** The amount of the errors and omissions insurance policy required by RCW 15.58.460(2)(a) shall not be less than twenty-five thousand dollars. The insurance policy shall be maintained at not less than the required sum at all times during the licensed period. The insurance policy shall provide coverage for errors and omissions in an inspection conducted during the term of the policy. However, the policy may limit the insurer's liability on the policy in effect at the time of the inspection to two years from the date of the inspection.

(b) **Surety Bond.** The amount of the surety bond required by RCW 15.58.460(2)(b) shall not be less than twenty-five thousand dollars. The surety bond shall be maintained at not less than the required sum at all times during the licensed period. Any person having a claim against the structural pest inspector for legal damages as a result of the actions of the structural pest inspector may bring suit upon the bond in the court of the county in which the inspection took place or of the county in which jurisdiction of the structural pest inspector may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. The suit upon the bond must be commenced within two years of the date of the inspection.

(c) **Surety Bond and Errors and Omissions Insurance.** The amount of the surety bond required by RCW 15.58.460(2)(c) shall not be less than twelve thousand five hundred dollars. Except as to the amount of the bond, the terms of the bond shall be identical to those set forth in (b) of this subsection. The amount of the errors and omissions insurance policy required by RCW 15.58.460(2)(c) shall not be less than twenty-five thousand dollars. The

insurance policy shall be maintained at not less than the required sum at all times during the licensed period. The insurance policy shall provide coverage for errors and omissions in an inspection conducted during the term of the policy.

(d) Assigned Account. The amount of the assigned account required by RCW 15.58.460(2)(d) shall not be less than twenty-five thousand dollars. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the inspector for legal damages resulting from errors and omissions in the conduct of an inspection, according to the provisions of the assigned account agreement. The department has no liability for payment in excess of the amount of the assigned account.

(i) The assigned account agreement filed with the director as evidence of financial responsibility shall be canceled at the expiration of two years after the inspector's license has expired or been revoked, or at the expiration of two years after the inspector has furnished another form of evidence of financial responsibility required by RCW 15.58.460, unless legal action has been instituted against the inspector prior to the expiration of the two-year period and the director has been provided written notice of the same by the claimant. In such a case the director shall not cancel the assigned account agreement until the director either receives a copy of the order dismissing the action by registered or certified mail, or has received a copy of the unsatisfied judgment and has complied with the requirements of (d)(ii) of this subsection.

(ii) Any person having an unsatisfied final judgment against the inspector for legal damages awarded based on errors and omissions in the conduct of an inspection may execute upon the funds in the assigned account by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall direct the financial institution to pay from the assigned account, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment from the assigned account shall be the order of receipt of the final judgment by the department.

(2) Nothing in subsection (1) of this section that limits the time period in which a suit must be commenced on a surety bond or in which a claim must be made on a policy effects the statute of limitations applicable to any claim any person may have against the structural pest inspector or company.

(3) The director may only accept a surety bond or insurance policy as evidence of financial responsibility if the bond or policy is issued by an insurer authorized to do business in this state. 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.

(4) 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 may not be accepted by the director unless the applicant furnishes the

director with a surety bond or insurance policy which satisfies the amount of the deductible as to all claims that may arise.

Sec. 11. RCW 15.58.470 and 2000 c 96 s 5 are each amended to read as follows:

Whenever ~~((a structural pest inspector's surety bond or insurance policy))~~ the form of evidence of financial responsibility for a structural pest inspector license is reduced below the requirements of RCW 15.58.465 or no longer applies to the structural pest inspector, or whenever the ((person)) licensee or the business that employs the licensee has failed to provide evidence of financial responsibility as required by RCW 15.58.460 by the expiration date of ~~((the))~~ any previous ((surety bond or insurance policy)) form of evidence of financial responsibility, 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 RCW 15.58.465 are met again.

NEW SECTION. Sec. 12. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the House March 10, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 9, 2003.

Filed in Office of Secretary of State May 9, 2003.

CHAPTER 213

[Engrossed Substitute House Bill 1001]

VOYEURISM

AN ACT Relating to voyeurism; amending RCW 9A.44.115; and declaring an emergency.

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

Sec. 1. RCW 9A.44.115 and 1998 c 221 s 1 are each amended to read as follows:

(1) As used in this section:

(a) "Intimate areas" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view;

(b) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person;

~~((b))~~ (c) "Place where he or she would have a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or

(ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

~~((e))~~ (d) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;

~~((d))~~ (e) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

(a) Another person~~((;))~~ without that person's knowledge and consent~~((;))~~ while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or

(b) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(3) Voyeurism is a class C felony.

(4) This section does not apply to viewing, photographing, or filming by personnel of the department of corrections or of a local jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the department of corrections or the local jail or correctional facility.

(5) If a person is convicted of a violation of this section, the court may order the destruction of any photograph, motion picture film, digital image, videotape, or any other recording of an image that was made by the person in violation of this section.

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

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 214

[Substitute Senate Bill 5716]

IDENTITY THEFT—DRIVERS LICENSES—IDENTICARDS

AN ACT Relating to crimes involving drivers' licenses and identicards; amending RCW 46.20.0921; and prescribing penalties.

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

Sec. 1. RCW 46.20.0921 and 1990 c 210 s 3 are each amended to read as follows:

(1) It is a misdemeanor for any person:

~~((1))~~ (a) To display or cause or permit to be displayed or have in his or her possession any fictitious or fraudulently altered driver's license or identicard;

~~((2))~~ (b) To lend his or her driver's license or identicard to any other person or knowingly permit the use thereof by another;

~~((3))~~ (c) To display or represent as one's own any driver's license or identicard not issued to him or her;

~~((4))~~ (d) Willfully to fail or refuse to surrender to the department upon its lawful demand any driver's license or identicard which has been suspended, revoked or canceled;

~~((5))~~ (e) To use a false or fictitious name in any application for a driver's license or identicard or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;

~~((6))~~ (f) To permit any unlawful use of a driver's license or identicard issued to him or her.

(2) It is a class C felony for any person to sell or deliver a stolen driver's license or identicard.

(3) It is unlawful for any person to manufacture, sell, or deliver a forged, fictitious, counterfeit, fraudulently altered, or unlawfully issued driver's license or identicard, or to manufacture, sell, or deliver a blank driver's license or identicard except under the direction of the department. A violation of this subsection is:

(a) A class C felony if committed (i) for financial gain or (ii) with intent to commit forgery, theft, or identity theft; or

(b) A gross misdemeanor if the conduct does not violate (a) of this subsection.

(4) Notwithstanding subsection (3) of this section, it is a misdemeanor for any person under the age of twenty-one to manufacture or deliver fewer than four forged, fictitious, counterfeit, or fraudulently altered driver's licenses or identicards for the sole purpose of misrepresenting a person's age.

(5) In a proceeding under subsection (2), (3), or (4) of this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

Passed by the Senate April 21, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 215

[House Bill 1712]

SEX OFFENDER REGISTRATION

AN ACT Relating to registration of sex offenders and kidnapping offenders; and amending RCW 9A.44.130.

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

Sec. 1. RCW 9A.44.130 and 2002 c 31 s 1 are each 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: (a) 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; (b) who gains employment at a public or private institution of higher education shall, within ten days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's employment by the institution; or (c) whose enrollment or employment at a public or private institution of higher education is terminated shall, within ten days of such termination, notify the sheriff for the county of the person's residence of the person's termination of enrollment or employment at 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. 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 forty-eight hours excluding weekends and holidays 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 weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(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 forty-eight hours excluding weekends and holidays 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:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) 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 or this subsection.

(b) "Kidnapping offense" means: (i) 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; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(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.

Passed by the House April 25, 2003.

Passed by the Senate April 25, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 216

[Engrossed Senate Bill 5991]

SECURE COMMUNITY TRANSITION FACILITIES

AN ACT Relating to changing minimum requirements for the existing secure community transition facility; amending RCW 71.09.300, 71.09.250, 71.09.275, and 71.09.290; reenacting and amending RCW 71.09.020; adding a new section to chapter 71.09 RCW; repealing RCW 71.09.270; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 71.09.300 and 2001 2nd sp.s. c 12 s 216 are each amended to read as follows:

((+)) Secure community transition facilities shall meet the following minimum staffing requirements:

(1)(a) At any time the census of a facility that accepts its first resident before July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per three residents during normal waking hours and one awake staff per four residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(b) At any time the census of a facility that accepts its first resident on or after July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff per three residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

((b)) (2) At any time the census of a facility is six or fewer residents, all staff shall be classified as residential rehabilitation counselor II or have a classification that indicates ((a)) an equivalent or higher level of skill, experience, and training.

((e)) (3) Before being assigned to a facility, all staff shall have training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.

~~((d))~~ (4) All staff must pass a departmental background check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a resident of the facility.

~~((2) With respect to the facility established pursuant to RCW 71.09.250(1), the department shall, no later than December 1, 2001, provide a staffing plan to the appropriate committees of the legislature that will cover the growth of that facility to its full capacity.))~~

Sec. 2. RCW 71.09.020 and 2002 c 68 s 4 and 2002 c 58 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) "Department" means the department of social and health services.

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(10) "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

(11) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential

activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(12) "Secretary" means the secretary of social and health services or the secretary's designee.

(13) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(14) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the ((facilities)) facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(15) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(16) "Sexually violent predator" means any person who has been convicted or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(17) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any

similar facility designated as a (~~secure~~) total confinement facility by the secretary.

Sec. 3. RCW 71.09.250 and 2001 2nd sp.s. c 12 s 201 are each amended to read as follows:

(1)(a) The secretary is authorized to site, construct, occupy, and operate (i) a secure community transition facility on McNeil Island for persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released; and (ii) a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of beds in the secure community transition facility shall be limited to twenty-four, consisting of up to fifteen transitional beds (~~shall be limited to fifteen~~) and up to nine pretransitional beds. The residents occupying (~~these~~) the transitional beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than fifteen residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the fifteen residents so designated, along with their photographs and physical descriptions, and (~~it~~) the list shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for residents (~~in halfway house status~~) who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2)(a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1)(a)(i) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition facility established pursuant to subsection (1) of this section is located may not

be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of June 26, 2001, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001; and

~~(b) ((In consultation with the joint select committee established in section 225, chapter 12, Laws of 2001 2nd sp. sess.))~~ Develop and publish policy guidelines for the siting and operation of secure community transition facilities ~~((by October 1, 2001; and~~

~~(c) Provide a status report to the appropriate committees of the legislature by December 1, 2002, on the development of facilities under the incentive program established in RCW 71.09.255. The report shall include a projection of the anticipated number of secure community transition facility beds that will become operational between May 2004 and May 2007. If it appears that an insufficient number of beds will be operational, the department's report shall recommend a progression of methods to facilitate siting in counties and cities including, if necessary, preemption of local land use planning process and other laws)).~~

(7)(a) The total number of secure community transition facility beds that may be required to be sited in a county between June 26, 2001, and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in RCW 71.09.255. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site additional secure community transition facilities and shall be eligible under the incentive

provisions of RCW 71.09.255 for any additional facilities meeting the requirements of that section.

(8) In identifying potential sites within a county for the location of a secure community transition facility, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(9)(a) "Equitable distribution" means siting or locating secure community transition facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which ~~((district))~~ distinct political or judicial authority may be exercised.

Sec. 4. RCW 71.09.275 and 2001 2nd sp.s. c 12 s 211 are each amended to read as follows:

~~(1) ((By August 1, 2001, the department must provide the appropriate committees of the legislature with a transportation plan to address the issues of coordinating the movement of residents of the secure community transition facility established pursuant to RCW 71.09.250(1) between McNeil Island and the mainland with the movement of others who must use the same docks or equipment within the funds appropriated for this purpose.~~

~~(2))~~ If the department does not provide a separate vessel for transporting residents of the secure community transition facility established in RCW 71.09.250(1) between McNeil Island and the mainland, the ~~((plan))~~ department shall ~~((include at least the following components))~~:

(a) ~~((The))~~ Separate residents ~~((shall be separated))~~ from minors and vulnerable adults, except vulnerable adults who have been found to be sexually violent predators.

(b) ~~((The))~~ Not transport residents ~~((shall not be transported))~~ during times when children are normally coming to and from the mainland for school.

~~((3))~~ (2) The department shall designate a separate waiting area at the points of debarkation, and residents shall be required to remain in this area while awaiting transportation.

~~((4))~~ (3) The department shall provide law enforcement agencies in the counties and cities in which residents of the secure community transition facility established pursuant to RCW 71.09.250(1)~~(a)(i)~~ regularly participate in employment, education, or social services, or through which these persons are regularly transported, with a copy of the court's order of conditional release with respect to these persons.

Sec. 5. RCW 71.09.290 and 2001 2nd sp.s. c 12 s 214 are each amended to read as follows:

The secretary shall establish policy guidelines for the siting of secure community transition facilities, other than the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i), which shall include at least the following minimum requirements:

(1) The following criteria must be considered prior to any real property being listed for consideration for the location of or use as a secure community transition facility:

(a) The proximity and response time criteria established under RCW 71.09.285;

(b) The site or building is available for lease for the anticipated use period or for purchase;

(c) Security monitoring services and appropriate back-up systems are available and reliable;

(d) Appropriate mental health and sex offender treatment providers must be available within a reasonable commute; and

(e) Appropriate permitting for a secure community transition facility must be possible under the zoning code of the local jurisdiction.

(2) For sites which meet the criteria of subsection (1) of this section, the department shall analyze and compare the criteria in subsections (3) through (5) of this section using the method established in RCW 71.09.285.

(3) Public safety and security criteria shall include at least the following:

(a) Whether limited visibility between the facility and adjacent properties can be achieved prior to placement of any person;

(b) The distance from, and number of, risk potential activities and facilities, as measured using the ~~(rules)~~ policies adopted under RCW 71.09.285;

(c) The existence of or ability to establish barriers between the site and the risk potential facilities and activities;

(d) Suitability of the buildings to be used for the secure community transition facility with regard to existing or feasibly modified features; and

(e) The availability of electronic monitoring that allows a resident's location to be determined with specificity.

(4) Site characteristics criteria shall include at least the following:

(a) Reasonableness of rental, lease, or sale terms including length and renewability of a lease or rental agreement;

(b) Traffic and access patterns associated with the real property;

(c) Feasibility of complying with zoning requirements within the necessary time frame; and

(d) A contractor or contractors are available to install, monitor, and repair the necessary security and alarm systems.

(5) Program characteristics criteria shall include at least the following:

(a) Reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities;

(b) Suitability of the location for programming, staffing, and support considerations;

(c) Proximity to employment, educational, vocational, and other treatment plan components.

(6) For purposes of this section "available" or "availability" of qualified treatment providers includes provider qualifications and willingness to provide services, average commute time, and cost of services.

NEW SECTION. Sec. 6. A new section is added to chapter 71.09 RCW to read as follows:

The emergency response team for McNeil Island shall plan, coordinate, and respond in the event of an escape from the special commitment center or the secure community transition facility.

NEW SECTION. Sec. 7. RCW 71.09.270 (Transition facility—Law enforcement presence) and 2001 2nd sp.s. c 12 s 210 are each repealed.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

Passed by the Senate April 26, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 217

[Senate Bill 5410]

SEX OFFENDERS—WEB SITE

AN ACT Relating to public information about registered sex offenders; and amending RCW 4.24.550.

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

Sec. 1. RCW 4.24.550 and 2002 c 118 s 1 are each amended to read as follows:

(1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects

to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources (~~other than state funds~~), the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, type of conviction, and address by hundred block.

(ii) For level II offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents at least fourteen days before the offender is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move, except that in no case may this notification provision be construed to require an extension of an offender's release date. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section.

(9) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee ~~((of {or}))~~ or the department of social and health services and submit its reasons supporting the change in classification. Upon implementation of subsection (5)(a) of this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs.

Passed by the Senate March 11, 2003.

Passed by the House April 23, 2003.

Approved by the Governor May 12, 2003.
Filed in Office of Secretary of State May 12, 2003.

CHAPTER 218

[Substitute Senate Bill 5749]

SEX OFFENDERS—HEARINGS

AN ACT Relating to hearings concerning violations by sex offenders of postrelease conditions; and amending RCW 9.95.435, 9.95.017, 9.95.055, 9.95.070, 9.95.120, 9.95.440, and 9.95.110.

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

Sec. 1. RCW 9.95.435 and 2002 c 175 s 17 are each amended to read as follows:

(1) If an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody.

(3) If an offender released by the board under RCW 9.95.420 is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board or a designee of the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members or designees of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The board shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the board;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within ~~((fifteen working))~~ thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. For offenders in total confinement, the hearing shall be held within ~~((five working))~~ thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. The board or its designee shall make a determination whether probable cause exists to believe the violation or violations occurred. The determination shall be made within forty-eight hours of receipt of the allegation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing examiner if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody upon a finding of violation is a ~~((possible))~~ probable sanction for the violation. The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has waived the right to counsel; and

(e) The sanction shall take effect if affirmed by the hearing examiner.

~~(5)~~ Within seven days after the hearing examiner's decision, the offender may appeal the decision to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: ~~((+))~~ (a) The crime of conviction; ~~((+))~~ (b) the violation committed; ~~((+))~~ (c) the offender's risk of reoffending; or ~~((+))~~ (d) the safety of the community.

~~((5))~~ (6) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

Sec. 2. RCW 9.95.017 and 2001 2nd sp.s. c 12 s 321 are each amended to read as follows:

(1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release. ~~((These proposed criteria shall be submitted for consideration by the 1987 legislature.))~~

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after ~~((July))~~ September 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in RCW 9.94A.712, 9.94A.713, 72.09.335, and 9.95.420 through 9.95.440.

Sec. 3. RCW 9.95.055 and 2001 2nd sp.s. c 12 s 325 are each amended to read as follows:

The indeterminate sentence review board is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a

general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate under the jurisdiction of the board confined in a state correctional facility, who will be accepted by and inducted into the armed services: PROVIDED, That a reduction downward shall not be made under this section for those inmates who: (1) Are confined for (a) treason(,); (b) murder in the first degree; or ((earned knowledge of a female child under ten years: AND PROVIDED FURTHER, That no such inmate shall be released under this section who is)) (c) rape of a child in the first degree where the victim is under ten years of age or an equivalent offense under prior law; (2) are being considered for civil commitment as a sexually violent predator under chapter 71.09 RCW; or ~~((was))~~ (3) were sentenced under RCW 9.94A.712 for a crime committed on or after ~~((July))~~ September 1, 2001.

Sec. 4. RCW 9.95.070 and 2001 2nd sp.s. c 12 s 327 are each amended to read as follows:

(1) Every prisoner, convicted of a crime committed before July 1, 1984, who has a favorable record of conduct at ~~((the penitentiary or the reformatory))~~ a state correctional institution, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him or her to the satisfaction of the superintendent of the ~~((penitentiary or reformatory))~~ institution, and in whose behalf the superintendent of the ~~((penitentiary or reformatory))~~ institution files a report certifying that his or her conduct and work have been meritorious and recommending allowance of time credits to him or her, shall upon, but not until, the adoption of such recommendation by the indeterminate sentence review board, be allowed time credit reductions from the term of imprisonment fixed by the board.

(2) Offenders sentenced under RCW 9.94A.712 for a crime committed on or after ~~((July))~~ September 1, 2001, are subject to the earned release provisions for sex offenders established in RCW 9.94A.728.

Sec. 5. RCW 9.95.120 and 2001 2nd sp.s. c 12 s 333 are each amended to read as follows:

Whenever the board or a community corrections officer of this state has reason to believe a person convicted of a crime committed before July 1, 1984, has breached a condition of his or her parole or violated the law of any state where he or she may then be or the rules and regulations of the board, any community corrections officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the board by the community corrections officer, with recommendations. The board, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state community corrections officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the community corrections officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal, which order shall be

sufficient warrant for all peace officers to take into custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the board for his or her return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his or her parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he or she may then be, he or she shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he or she is served with charges of the violation of conditions of parole after his or her arrest and detention. The hearing shall be held before one or more members of the board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the board suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the board shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the board may determine advisable. Before the board shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a ((~~penal~~)) correctional institution.

Sec. 6. RCW 9.95.440 and 2001 2nd sp.s. c 12 s 310 are each amended to read as follows:

In the event the board suspends the release status of an offender released under RCW 9.95.420 by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board determines advisable under RCW 9.94A.713(5). Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement.

Sec. 7. RCW 9.95.110 and 2001 2nd sp.s. c 12 s 331 are each amended to read as follows:

(1) The board may permit an offender convicted of a crime committed before July 1, 1984, to leave the buildings and enclosures of a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good

behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which an offender may be allowed to leave the confines of a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after ~~(July)~~ September 1, 2001, and sentenced under RCW 9.94A.712, to leave a state correctional institution on community custody according to the provisions of RCW 9.94A.712, 9.94A.713, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of RCW 9.95.435.

Passed by the Senate April 21, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 219

[Substitute House Bill 2094]

LAW ENFORCEMENT INVESTIGATIONS—DETAINING INDIVIDUALS

AN ACT Relating to detaining a person for the purpose of allowing a law enforcement investigation; adding a new section to chapter 9A.16 RCW; and adding a new section to chapter 4.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9A.16 RCW to read as follows:

(1) In a criminal action brought against the detainer by reason of a person having been detained on or in the immediate vicinity of the premises of an outdoor music festival or related campground for the purpose of pursuing an investigation or questioning by a law enforcement officer as to the lawfulness of the consumption or possession of alcohol or illegal drugs, it is a defense that the detained person was detained in a reasonable manner and for not more than a reasonable time to permit the investigation or questioning by a law enforcement officer, and that a peace officer, owner, operator, employee, or agent of the outdoor music festival had reasonable grounds to believe that the person so detained was unlawfully consuming or attempting to unlawfully consume or possess, alcohol or illegal drugs on the premises.

(2) For the purposes of this section:

(a) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the person detained does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the person does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(b) "Outdoor music festival" has the same meaning as in RCW 70.108.020, except that no minimum time limit is required.

(c) "Reasonable grounds" include, but are not limited to:

(i) Exhibiting the effects of having consumed liquor, which means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(A) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(B) Is shown by other evidence to have recently consumed liquor; or

(ii) Exhibiting the effects of having consumed an illegal drug, which means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug, and either:

(A) Is in possession of an illegal drug; or

(B) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to allow a law enforcement officer to determine the lawfulness of the consumption or possession of alcohol or illegal drugs. "Reasonable time" may not exceed one hour.

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

(1) In a civil action brought against the detainer by reason of a person having been detained on or in the immediate vicinity of the premises of an outdoor music festival or related campground for the purpose of investigation or questioning as to the lawfulness of the consumption or possession of alcohol or illegal drugs, it is a defense that the detained person was detained in a reasonable manner and for not more than a reasonable time to permit the investigation or questioning by a law enforcement officer, and that a peace officer, owner, operator, employee, or agent of the outdoor music festival had reasonable grounds to believe that the person so detained was unlawfully consuming or attempting to unlawfully consume or possess, alcohol or illegal drugs on the premises.

(2) For the purposes of this section:

(a) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the person detained does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the person does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(b) "Outdoor music festival" has the same meaning as in RCW 70.108.020, except that no minimum time limit is required.

(c) "Reasonable grounds" include, but are not limited to:

(i) Exhibiting the effects of having consumed liquor, which means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(A) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(B) Is shown by other evidence to have recently consumed liquor; or

(ii) Exhibiting the effects of having consumed an illegal drug, which means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug, and either:

(A) Is in possession of an illegal drug; or

(B) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to allow a law enforcement officer to determine the lawfulness of the consumption or possession of alcohol or illegal drugs. "Reasonable time" may not exceed one hour.

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 220

[Substitute Senate Bill 5396]

DEFERRED PROSECUTIONS

AN ACT Relating to court-imposed conditions of deferred prosecutions; and amending RCW 10.05.120 and 10.05.140.

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

Sec. 1. RCW 10.05.120 and 2002 c 219 s 14 are each amended to read as follows:

(1) Three years after receiving proof of successful completion of the two-year treatment program, and following proof to the court that the petitioner has complied with the conditions imposed by the court following successful completion of the two-year treatment program, but not before five years following entry of the order of deferred prosecution pursuant to a petition brought under RCW 10.05.020(1), the court shall dismiss the charges pending against the petitioner.

(2) When a deferred prosecution is ordered pursuant to a petition brought under RCW 10.05.020(2) and the court has received proof that the petitioner has successfully completed the child welfare service plan, or the plan has been terminated because the alleged victim has reached his or her majority and there are no other minor children in the home, the court shall dismiss the charges pending against the petitioner: **PROVIDED**, That in any case where the petitioner's parental rights have been terminated with regard to the alleged victim due to abuse or neglect that occurred during the pendency of the deferred prosecution, the termination shall be per se evidence that the petitioner did not successfully complete the child welfare service plan.

Sec. 2. RCW 10.05.140 and 1999 c 331 s 4 are each amended to read as follows:

As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred

prosecution petition, the court shall also order the installation of an interlock or other device under RCW 46.20.720 for a petitioner who has previously been convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance or a petitioner who has been charged with such an offense and had an alcohol concentration of at least .15, or by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration. For any other petitioner, the court may order the installation of an interlock device under RCW 46.20.720(1) as a condition of granting a deferred prosecution petition. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of ~~((this section))~~ the deferred prosecution order.

Passed by the Senate February 26, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 221

[House Bill 1576]

FAILURE TO PROVIDE PROOF OF INSURANCE—CITATION DISMISSALS

AN ACT Relating to dismissal of citations for failure to provide proof of insurance; and amending RCW 46.30.020.

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

Sec. 1. RCW 46.30.020 and 2002 c 175 s 35 are each amended to read as follows:

(1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16 RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. Written proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) When asked to do so by a law enforcement officer, failure to display an insurance identification card as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community restitution.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court or a violations bureau and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed and the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court or violations bureau, submit by mail to the court or violations bureau written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.16.305(1), governed by RCW 46.16.020, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, or a moped as defined in RCW 46.04.304.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW.

Passed by the House March 14, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 222

[Substitute Senate Bill 5592]

GARNISHMENTS

AN ACT Relating to garnishments; amending RCW 6.27.020, 6.27.070, 6.27.100, 6.27.130, 6.27.140, 6.27.160, 6.27.190, 6.27.200, 6.27.250, 6.27.265, 6.27.320, 6.27.340, 6.27.350, 3.62.060, 6.27.010, and 6.27.060; and reenacting and amending RCW 6.27.040.

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

Sec. 1. RCW 6.27.020 and 1987 c 442 s 1002 are each amended to read as follows:

(1) The clerks of the superior courts and district courts of this state may issue writs of garnishment returnable to their respective courts for the benefit of a judgment creditor who has a judgment wholly or partially unsatisfied in the court from which the garnishment is sought.

(2) Writs of garnishment may be issued in district court with like effect by the attorney of record for the judgment creditor, and the form of writ shall be substantially the same as when issued by the court except that it shall be subscribed only by the signature of such attorney.

(3) Except as otherwise provided in RCW 6.27.040 and 6.27.330, the superior courts and district courts of this state may issue prejudgment writs of garnishment to a plaintiff at the time of commencement of an action or at any time afterward, subject to the requirements of chapter 6.26 RCW.

Sec. 2. RCW 6.27.040 and 1987 c 442 s 1004 and 1987 c 202 s 134 are each reenacted and amended to read as follows:

(1) The state of Washington, all counties, cities, towns, school districts and other municipal corporations shall be subject to garnishment after judgment has been entered in the principal action, but not before, in the superior and district courts, in the same manner and with the same effect, as provided in the case of other garnishees.

(2) The venue of any such garnishment proceeding shall be the same as for the original action, and the writ shall be issued by the clerk of the court having jurisdiction of such original action or by the attorney of record for the judgment creditor in district court.

(3) The writ of garnishment shall be served (~~in the same manner and~~) upon the same officer as is required for service of summons upon the commencement of a civil action against the state, county, city, town, school district, or other municipal corporation, as the case may be.

Sec. 3. RCW 6.27.070 and 1987 c 442 s 1007 are each amended to read as follows:

(1) When application for a writ of garnishment is made by a judgment creditor and the requirements of RCW 6.27.060 have been complied with, the clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor in the form prescribed in RCW 6.27.100, directed to the garnishee, commanding the garnishee to answer said writ on forms served with the writ and complying with RCW 6.27.190 within twenty days after the service of the writ upon the garnishee. The clerk shall likewise docket the case when a writ of garnishment issued by the attorney of record of a judgment creditor is filed. Whether a writ is issued by the clerk or an attorney, the clerk shall bear no responsibility for errors contained in the writ.

(2) The writ of garnishment shall be dated and attested as in the form prescribed in RCW 6.27.100. The name and office address of the plaintiff's attorney shall be indorsed thereon or, in case the plaintiff has no attorney, the name and address of the plaintiff shall be indorsed thereon. The address of the clerk's office shall appear at the bottom of the writ.

Sec. 4. RCW 6.27.100 and 2000 c 72 s 3 are each amended to read as follows:

(1) The writ shall be substantially in the following form(~~(=PROVIDED, That)~~), but 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~~); and if the garnishment is for a continuing lien, the form shall be modified as provided in RCW 6.27.340(~~(= AND PROVIDED FURTHER, That~~); and 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; and if the writ is issued by an attorney, the writ shall be revised as indicated in subsection (2) of this section:

"IN THE COURT
OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF

.....
Plaintiff, No.
vs.
.....
Defendant WRIT OF
GARNISHMENT
.....
Garnishee

THE STATE OF WASHINGTON TO:
Garnishee

AND TO:
Defendant

The above-named plaintiff has applied for a writ of garnishment against you, claiming that the above-named defendant is indebted to plaintiff and that the amount to be held to satisfy that indebtedness is \$, consisting of:

Balance on Judgment or Amount of Claim	\$
Interest under Judgment from to	\$
Taxable Costs and Attorneys' Fees	\$
Estimated Garnishment Costs:	
Filing Fee	\$
Service and Affidavit Fees	\$
Postage and Costs of Certified Mail	\$
Answer Fee or Fees (If applicable)	\$
Garnishment Attorney Fee	\$
Other	\$

YOU ARE HEREBY COMMANDED, unless otherwise directed by the court, by the attorney of record for the plaintiff, or by this writ, not to pay any debt, whether earnings subject to this garnishment or any other debt, owed to the defendant at the time this writ was served and not to deliver, sell, or transfer, or recognize any sale or transfer of, any personal property or effects of the defendant in your possession or control at the time when this writ was served.

Any such payment, delivery, sale, or transfer is void to the extent necessary to satisfy the plaintiff's claim and costs for this writ with interest.

YOU ARE FURTHER COMMANDED to answer this writ by filling in the attached form according to the instructions in this writ and in the answer forms and, within twenty days after the service of the writ upon you, to mail or deliver the original of such answer to the court, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant, in the envelopes provided.

If, at the time this writ was served, you owed the defendant any earnings (that is, wages, salary, commission, bonus, or other compensation for personal services or any periodic payments pursuant to a nongovernmental pension or retirement program), the defendant is entitled to receive amounts that are exempt from garnishment under federal and state law. You must pay the exempt amounts to the defendant on the day you would customarily pay the compensation or other periodic payment. As more fully explained in the answer, the basic exempt amount is the greater of seventy-five percent of disposable earnings or a minimum amount determined by reference to the employee's pay period, to be calculated as provided in the answer. 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.

IF YOU FAIL TO ANSWER THIS WRIT AS COMMANDED, A JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTEREST, 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 above-entitled Court, and the seal thereof, this day of, 20 . . .

[Seal]

..... Attorney for Plaintiff (or Plaintiff, if no attorney) Address Clerk of the Court By Address"
---	--

(2) If an attorney issues the writ of garnishment, the final paragraph of the writ, containing the date, and the subscribed attorney and clerk provisions, shall be replaced with text in substantially the following form:

"This writ is issued by the undersigned attorney of record for plaintiff under the authority of chapter 6.27 of the Revised Code of Washington, and must be complied with in the same manner as a writ issued by the clerk of the court.

Dated this day of 20

.....
Attorney for Plaintiff

.....
Address"

.....
Address of the Clerk of the Court

Sec. 5. RCW 6.27.130 and 1988 c 231 s 27 are each amended to read as follows:

(1) When a writ is issued under a judgment, on or before the date of service of the writ on the garnishee, the judgment creditor shall mail or cause to be mailed to the judgment debtor, by certified mail, addressed to the last known post office address of the judgment debtor, (a) a copy of the writ and a copy of the ((~~judgment or, if it is a district court judgment, a copy of the~~)) judgment creditor's affidavit submitted in application for the writ, and (b) if the judgment debtor is an individual, the notice and claim form prescribed in RCW 6.27.140. In the alternative, on or before the day of the service of the writ on the garnishee or within two days thereafter, the stated documents shall be served on the judgment debtor in the same manner as is required for personal service of summons upon a party to an action.

(2) The requirements of this section shall not be jurisdictional, but (a) no disbursement order or judgment against the garnishee defendant shall be entered unless there is on file the return or affidavit of service or mailing required by subsection (3) of this section, and (b) if the copies of the writ and judgment or affidavit, and the notice and claim form if the defendant is an individual, are not mailed or served as herein provided, or if any irregularity appears with respect to the mailing or service, the court, in its discretion, on motion of the judgment debtor promptly made and supported by affidavit showing that the judgment debtor has suffered substantial injury from the plaintiff's failure to mail or otherwise to serve such copies, may set aside the garnishment and award to the judgment debtor an amount equal to the damages suffered because of such failure.

(3) If the service on the judgment debtor is made by a sheriff, the sheriff shall file with the clerk of the court that issued the writ a signed return showing the time, place, and manner of service and that the copy of the writ was

accompanied by a copy of a judgment or affidavit, and by a notice and claim form if required by this section, and shall note thereon fees for making such service. If service is made by any person other than a sheriff, such person shall file an affidavit including the same information and showing qualifications to make such service. If service on the judgment debtor is made by mail, the person making the mailing shall file an affidavit including the same information as required for return on service and, in addition, showing the address of the mailing and attaching the return receipt or the mailing should it be returned to the sender as undeliverable.

Sec. 6. RCW 6.27.140 and 1997 c 59 s 2 are each amended to read as follows:

(1) The notice required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

**NOTICE OF GARNISHMENT
AND OF YOUR RIGHTS**

A Writ of Garnishment issued ((by)) in a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the garnishee held or controlled. This notice of your rights is required by law.

YOU HAVE THE FOLLOWING EXEMPTION RIGHTS:

WAGES. If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the writ of garnishment. You should receive a copy of your employer's answer, which will show how the exempt amount was calculated. If the garnishment is for child support, the exempt amount paid to you will be forty percent of wages due you, but if you are supporting a spouse or dependent child, you are entitled to claim an additional ten percent as exempt.

BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, veterans' benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

OTHER EXEMPTIONS. If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts up to five hundred dollars of property of your choice (including up to one hundred dollars in cash or in a bank account) and certain property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the law requires a hearing not later than 14 days after the plaintiff receives your claim form, and notice of the objection and hearing date

will be mailed to you at the address that you put on the claim form.

THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN ATTORNEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

(2) The claim form required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

[Caption to be filled in by judgment creditor or plaintiff before mailing.]

.....
Name of Court

.....
Plaintiff,

vs.

.....
Defendant,

.....
Garnishee Defendant

No

EXEMPTION CLAIM

INSTRUCTIONS:

- 1. Read this whole form after reading the enclosed notice. Then put an X in the box or boxes that describe your exemption claim or claims and write in the necessary information on the blank lines. If additional space is needed, use the bottom of the last page or attach another sheet.

- 2. Make two copies of the completed form. Deliver the original form by first class mail or in person to the clerk of the court, whose address is shown at the bottom of the writ of garnishment. Deliver one of the copies by first class mail or in person to the plaintiff or plaintiff's attorney, whose name and address are shown at the bottom of the writ. Keep the other copy. **YOU SHOULD DO THIS AS QUICKLY AS POSSIBLE, BUT NO LATER THAN 28 DAYS (4 WEEKS) AFTER THE DATE ON THE WRIT.**

I/We claim the following money or property as exempt:

IF BANK ACCOUNT IS GARNISHED:

- The account contains payments from:
 - Temporary assistance for needy families, SSI, or other public assistance. I receive \$ monthly.
 - Social Security. I receive \$ monthly.
 - Veterans' Benefits. I receive \$ monthly.
 - U.S. Government Pension. I receive \$ monthly.
 - Unemployment Compensation. I receive \$ monthly.
 - Child support. I receive \$ monthly.
 - Other. Explain

IF EXEMPTION IN BANK ACCOUNT IS CLAIMED, ANSWER ONE OR BOTH OF THE FOLLOWING:

- No money other than from above payments are in the account.
- Moneys in addition to the above payments have been deposited in the account. Explain

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

- I claim maximum exemption.
- I am supporting another child or other children.
- I am supporting a husband or a wife.

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

- Name and address of employer who is paying the benefits:

OTHER PROPERTY:

- Describe property
- (If you claim other personal property as exempt, you must attach a list of all other personal property that you own.)

.....
Print: Your name	If married, name of husband/wife
.....
Your signature	Signature of husband or wife
.....

..... Address	..... Address (if different from yours)
..... Telephone number	..... Telephone number (if different from yours)

CAUTION: If the plaintiff objects to your claim, you will have to go to court and give proof of your claim. For example, if you claim that a bank account is exempt, you may have to show the judge your bank statements and papers that show the source of the money you deposited in the bank. Your claim may be granted more quickly if you attach copies of such proof to your claim.

IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES.

Sec. 7. RCW 6.27.160 and 2002 c 265 s 3 are each amended to read as follows:

(1) A defendant may claim exemptions from garnishment in the manner specified by the statute that creates the exemption or by delivering to or mailing by first class mail to the clerk of the court out of which the writ was issued a declaration in substantially the following form or in the form set forth in RCW 6.27.140 and mailing a copy of the form by first class mail to the plaintiff or plaintiff's attorney at the address shown on the writ of garnishment, all not later than twenty-eight days after the date stated on the writ except that the time shall be extended to allow a declaration mailed or delivered to the clerk within twenty-one days after service of the writ on the garnishee if service on the garnishee is delayed more than seven days after the date of the writ.

[NAME OF COURT]

..... Plaintiff	No.
..... Defendant	
..... Garnishee	CLAIM OF EXEMPTION

I/We claim the following described property or money as exempt from execution:

.....
.....
.....

I/We believe the property is exempt because:

.....
.....
.....

..... Print name Print name of spouse, if married
---------------------	--

..... Signature	..... Signature
..... Address	..... Address
..... Telephone number	..... ..... Telephone number

(2) A plaintiff who wishes to object to an exemption claim must, not later than seven days after receipt of the claim, cause to be delivered or mailed to the defendant by first class mail, to the address shown on the exemption claim, a declaration by self, attorney, or agent, alleging the facts on which the objection is based, together with notice of date, time, and place of a hearing on the objection, which hearing the plaintiff must cause to be noted for a hearing date not later than fourteen days after the receipt of the claim. After a hearing on an objection to an exemption claim, the court shall award costs to the prevailing party and may also award an attorney's fee to the prevailing party if the court concludes that the exemption claim or the objection to the claim was not made in good faith. The defendant bears the burden of proving any claimed exemption, including the obligation to provide sufficient documentation to identify the source and amount of any claimed exempt funds.

(3) If the plaintiff elects not to object to the claim of exemption, the plaintiff shall, not later than ten days after receipt of the claim, obtain from the court and deliver to the garnishee an order directing the garnishee to release such part of the debt, property, or effects as is covered by the exemption claim. If the plaintiff fails to obtain and deliver the order as required or otherwise to effect release of the exempt funds or property, the defendant shall be entitled to recover fifty dollars from the plaintiff, in addition to actual damages suffered by the defendant from the failure to release the exempt property. The attorney of record for the plaintiff may, as an alternative to obtaining a court order releasing exempt funds, property, or effects, deliver to the garnishee and file with the court an authorization to release claimed exempt funds, property, or effects, signed by the attorney, in substantially the following form:

[NAME OF COURT]

..... <u>Plaintiff,</u>	No.
----------------------------	----------

vs.

RELEASE OF WRIT OF
GARNISHMENT

.....
Defendant

.....
Garnishee.

TO THE ABOVE-NAMED GARNISHEE

You are hereby directed by the attorney for plaintiff, under the authority of chapter 6.27 of the Revised Code of Washington, to release the writ of garnishment issued in this cause on, as follows: [indicate full or partial release, and if partial the extent to which the garnishment is released]

You are relieved of your obligation to withhold funds or property of the defendant to the extent indicated in this release. Any funds or property covered by this release which have been withheld, should be returned to the defendant.

Date:.....
.....
Attorney for Plaintiff

Sec. 8. RCW 6.27.190 and 2000 c 72 s 4 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,~~). Prior to serving the answer forms for a writ for continuing lien on earnings, the plaintiff shall fill in the minimum exemption amounts for the different pay periods, and the maximum percentages of disposable earnings subject to lien and exempt from lien. 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, the paragraphs in section II of the answer relating to ((the)) earnings ((exemptions)) and calculations of withheld amounts may be omitted.

IN THE COURT
OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF
..... NO.
Plaintiff
vs.
..... ANSWER
Defendant TO WRIT OF
..... GARNISHMENT
Garnishee Defendant

SECTION 1. 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.)); (A) The defendant: (check one) was, was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment: ; and complete section III of this answer and mail or deliver the forms as directed in the writ;

(B) The defendant: (check one) did, did not maintain a financial account with garnishee; and

(C) The garnishee: (check one) did, did not have possession of or control over any funds, personal property, or effects of the defendant. (List all of defendant's personal property or effects in your possession or control on the last page of this answer form or attach a schedule if necessary.)

SECTION II. 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 \$

This writ attaches a maximum of percent of the defendant's disposable earnings (that is, compensation payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and including periodic payments pursuant to a nongovernmental pension or retirement program). Calculate the attachable amount as follows:

Gross Earnings \$(1)

Less deductions required by law (social security, federal withholding tax, etc. Do not include deductions for child support orders or government liens here. Deduct child support orders and liens on line 7): \$(2)

Disposable Earnings (subtract line 2 from line 1): \$(3)

Enter percent of line 3: \$(4)

Enter one of the following exempt amounts*: \$(5)

<u>If paid:</u>	<u>Weekly</u>	<u>\$</u>	<u>Semi-monthly</u>	<u>\$</u>
	<u>Bi-weekly</u>	<u>\$</u>	<u>Monthly</u>	<u>\$</u>

*These are minimum exempt amounts that the defendant must be paid. If your answer covers more than one pay period, multiply the preceding amount by the number of pay periods and/or fraction thereof your answer covers. If you use a pay period not shown, prorate the monthly exempt amount.

Subtract the larger of lines 4 and 5 from line 3: \$(6)

Enter amount (if any) withheld for ongoing government liens such as child support: \$(7)

Subtract line 7 from line 6. This amount must be held out for the plaintiff: \$(8)

This is the formula that you will use for withholding each pay period over the required sixty-day garnishment period. Deduct any allowable processing fee you may charge from the amount that is to be paid to the defendant.

If there is any uncertainty about your answer, give an explanation on the last page or on an attached page.

SECTION III. 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 Garnishee Defendant	..... Date
..... Signature of person answering for garnishee	..... Connection with garnishee
((..... Address of Garnishee))	
..... Print name of person signing	..... Address of garnishee

Sec. 9. RCW 6.27.200 and 1997 c 296 s 6 are each amended to read as follows:

If the garnishee fails to answer the writ within the time prescribed in the writ, after the time to answer the writ has expired and after required returns or affidavits have been filed, showing service on the garnishee and service on or mailing to the defendant, it shall be lawful for the court to render judgment by default against such garnishee, after providing a notice to the garnishee by personal service or first class mail deposited in the mail at least ten calendar days prior to entry of the judgment, for the full amount claimed by the plaintiff against the defendant, or in case the plaintiff has a judgment against the defendant, for the full amount of the plaintiff's unpaid judgment against the defendant with all accruing interest and costs as prescribed in RCW 6.27.090: PROVIDED, That upon motion by the garnishee at any time within seven days following service on, or mailing to, the garnishee of a copy of ((a)) the first writ of execution or ((a)) writ of garnishment under such judgment, the judgment against the garnishee shall be reduced to the amount of any nonexempt funds or property which was actually in the possession of the garnishee at the time the writ was served, plus the cumulative amount of the nonexempt earnings subject to the lien provided for in RCW 6.27.350, or the sum of one hundred dollars, whichever is more, but in no event to exceed the full amount claimed by the plaintiff or the amount of the unpaid judgment against the principal defendant plus all accruing interest and costs and attorney's fees as prescribed in RCW 6.27.090, and in addition the plaintiff shall be entitled to a reasonable attorney's fee for the plaintiff's response to the garnishee's motion to reduce said judgment against the garnishee under this proviso and the court may allow additional attorney's fees for other actions taken because of the garnishee's failure to answer.

Sec. 10. RCW 6.27.250 and 2000 c 72 s 5 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 or to the plaintiff's attorney 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 or to the plaintiff's attorney. 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 plaintiff's attorney 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.

Sec. 11. RCW 6.27.265 and 2000 c 72 s 6 are each amended 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 [or to plaintiff's attorney] through the registry of the court, and the clerk of the court shall note receipt thereof and forthwith disburse such payment to plaintiff [or to plaintiff's attorney]; that, if this is a district court order, garnishee shall pay its judgment amount to plaintiff directly [or ((through)) to plaintiff's attorney], and if any payment is received by the clerk of the court, the clerk shall forthwith disburse such payment to plaintiff [or to plaintiff's attorney]. 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. 12. RCW 6.27.320 and 2000 c 72 s 7 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 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. The attorney of record for the plaintiff may, as an alternative to obtaining a court order dismissing the garnishment, deliver to the garnishee and file with the court an authorization to dismiss the garnishment in whole or part, signed by the attorney, in substantially the form indicated in RCW 6.27.160(3). In the event of the failure of plaintiff to obtain and serve such an order or release, 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.

Sec. 13. RCW 6.27.340 and 1988 c 231 s 34 are each amended to read as follows:

- (1) Service of a writ for a continuing lien shall comply fully with RCW 6.27.110.
- (2) The caption of the writ shall be marked "CONTINUING LIEN ON EARNINGS" and the following additional paragraph shall be included in the writ form prescribed in RCW 6.27.100:

"THIS IS A WRIT FOR A CONTINUING LIEN. THE GARNISHEE SHALL HOLD the nonexempt portion of the defendant's earnings due at the time of service of this writ and shall also hold the defendant's nonexempt earnings that accrue through the last payroll period ending on or before SIXTY days after the date of service of this writ. HOWEVER, IF THE GARNISHEE IS PRESENTLY HOLDING THE NONEXEMPT PORTION OF THE DEFENDANT'S EARNINGS UNDER A PREVIOUSLY SERVED WRIT FOR A CONTINUING LIEN, THE GARNISHEE SHALL HOLD UNDER THIS WRIT only the defendant's nonexempt earnings that accrue from the date the previously served writ or writs terminate and through the last payroll period ending on or before sixty days after the date of termination of the previous writ or writs. IN EITHER CASE, THE GARNISHEE SHALL STOP WITHHOLDING WHEN THE SUM WITHHELD EQUALS THE AMOUNT STATED IN THIS WRIT OF GARNISHMENT."

(3) The answer forms served on an employer with the writ shall include in the caption, "ANSWER TO WRIT OF GARNISHMENT FOR CONTINUING LIEN ON EARNINGS," and the following paragraph shall be added (~~as the first paragraph~~) to section I of the answer form prescribed in RCW 6.27.190:

"If you are withholding the defendant's nonexempt earnings under a previously served writ for a continuing lien, answer only (~~this portion~~) sections I and II of this form and mail or deliver the forms as directed in the writ. Withhold from the defendant's future nonexempt earnings as directed in the writ, and a second set of answer forms will be forwarded to you later.

ANSWER: I am presently holding the defendant's nonexempt earnings under a previous writ served on that will terminate not later than, ((19)) 20

If you are NOT withholding the defendant's earnings under a previously served writ for a continuing lien, answer (~~the following portion of~~) this entire form and mail or deliver the forms as directed in the writ. A second set of answer forms will be forwarded to you later for subsequently withheld earnings."

(4) In the event plaintiff fails to comply with this section, employer may elect to treat the garnishment as one not creating a continuing lien.

Sec. 14. RCW 6.27.350 and 1997 c 296 s 7 are each amended to read as follows:

(1) Where the garnishee's answer to a garnishment for a continuing lien reflects that the defendant is employed by the garnishee, the judgment or balance due thereon as reflected on the writ of garnishment shall become a lien on

earnings due at the time of the effective date of the writ, as defined in this subsection, to the extent that they are not exempt from garnishment, and such lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment or until the expiration of the employer's payroll period ending on or before sixty days after the effective date of the writ, whichever occurs first, except that such lien on subsequent earnings shall terminate sooner if the employment relationship is terminated or if the underlying judgment is vacated, modified, or satisfied in full or if the writ is dismissed. The "effective date" of a writ is the date of service of the writ if there is no previously served writ; otherwise, it is the date of termination of a previously served writ or writs.

(2) At the time of the expected termination of the lien, the plaintiff shall mail to the garnishee three additional stamped envelopes addressed as provided in RCW 6.27.110, and four additional copies of the answer form prescribed in RCW 6.27.190(~~(-a)~~). The plaintiff shall replace the text of section I of the answer form with a statement in substantially the following form ((added as the first paragraph): "ANSWER ((THE SECOND PART)) SECTION II OF THIS FORM WITH RESPECT TO THE TOTAL AMOUNT OF EARNINGS WITHHELD UNDER THIS GARNISHMENT, INCLUDING THE AMOUNT, IF ANY, STATED IN YOUR FIRST ANSWER, AND WITHIN TWENTY DAYS AFTER YOU RECEIVE THESE FORMS, MAIL OR DELIVER THEM AS DIRECTED IN THE WRIT((~~and (b) with the following lines substituted for the first sentence of the form prescribed in RCW 6.27.190:~~))"

Amount due and owing stated in first answer	\$
	..
Amount accrued since first answer	\$
	..
<u>TOTAL AMOUNT WITHHELD</u>	<u>\$</u>

(3) Within twenty days of receipt of the second answer form the garnishee shall file a second answer, in the form as provided in subsection (2) of this section, stating the total amount held subject to the garnishment.

Sec. 15. RCW 3.62.060 and 1992 c 62 s 8 are each amended to read as follows:

Clerks of the district courts shall collect the following fees for their official services:

(1) In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of thirty-one dollars plus any surcharge authorized by RCW 7.75.035. No party shall be compelled to pay to the court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

(2) For issuing a writ of garnishment or other writ, or for filing an attorney issued writ of garnishment, a fee of six dollars.

(3) For filing a supplemental proceeding a fee of twelve dollars.

(4) For demanding a jury in a civil case a fee of fifty dollars to be paid by the person demanding a jury.

(5) For preparing a transcript of a judgment a fee of six dollars.

(6) For certifying any document on file or of record in the clerk's office a fee of five dollars.

(7) For preparing the record of a case for appeal to superior court a fee of forty dollars including any costs of tape duplication as governed by the rules of appeal for courts of limited jurisdiction (RALJ).

(8) For duplication of part or all of the electronic tape or tapes of a proceeding ten dollars per tape.

The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded.

Sec. 16. RCW 6.27.010 and 1987 c 442 s 1001 are each amended to read as follows:

(1) As used in this chapter, the term "earnings" means compensation paid or payable to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a nongovernmental pension or retirement program.

(2) As used in this chapter, the term "disposable earnings" means that part of earnings remaining after the deduction from those earnings of any amounts required by law to be withheld.

Sec. 17. RCW 6.27.060 and 1988 c 231 s 22 are each amended to read as follows:

The judgment creditor as the plaintiff or someone in the judgment creditor's behalf shall apply for a writ of garnishment by affidavit, stating the following facts: (1) The plaintiff has a judgment wholly or partially unsatisfied in the court from which the writ is sought; (2) the amount alleged to be due under that judgment; (3) the plaintiff has reason to believe, and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law; and (4) whether or not the garnishee is the employer of the judgment debtor.

The judgment creditor shall pay to the clerk of the superior court the fee provided by RCW 36.18.020, or to the clerk of the district court the fee (~~of two dollars~~) provided by RCW 3.62.060.

Passed by the Senate April 21, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 223

[House Bill 1226]

SUMMONS—SERVICE ON NONRESIDENT DRIVERS

AN ACT Relating to service of summons for persons who cannot be found in this state; and amending RCW 46.64.040.

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

Sec. 1. RCW 46.64.040 and 1993 c 269 s 16 are each amended to read as follows:

The acceptance by a nonresident of the rights and privileges conferred by law in the use of the public highways of this state, as evidenced by his or her operation of a vehicle thereon, or the operation thereon of his or her vehicle with his or her consent, express or implied, shall be deemed equivalent to and construed to be an appointment by such nonresident of the secretary of state of the state of Washington to be his or her true and lawful attorney upon whom may be served all lawful summons and processes against him or her growing out of any accident, collision, or liability in which such nonresident may be involved while operating a vehicle upon the public highways, or while his or her vehicle is being operated thereon with his or her consent, express or implied, and such operation and acceptance shall be a signification of the nonresident's agreement that any summons or process against him or her which is so served shall be of the same legal force and validity as if served on the nonresident personally within the state of Washington. Likewise each resident of this state who, while operating a motor vehicle on the public highways of this state, is involved in any accident, collision, or liability and thereafter at any time within the following three years ((departs from)) cannot, after a due and diligent search, be found in this state appoints the secretary of state of the state of Washington as his or her lawful attorney for service of summons as provided in this section for nonresidents. Service of such summons or process shall be made by leaving two copies thereof with a fee established by the secretary of state by rule with the secretary of state of the state of Washington, or at the secretary of state's office, and such service shall be sufficient and valid personal service upon said resident or nonresident: PROVIDED, That notice of such service and a copy of the summons or process is forthwith sent by registered mail with return receipt requested, by plaintiff to the defendant at the last known address of the said defendant, and the plaintiff's affidavit of compliance herewith are appended to the process, together with the affidavit of the plaintiff's attorney that the attorney has with due diligence attempted to serve personal process upon the defendant at all addresses known to him or her of defendant and further listing in his or her affidavit the addresses at which he or she attempted to have process served. However, if process is forwarded by registered mail and defendant's endorsed receipt is received and entered as a part of the return of process then the foregoing affidavit of plaintiff's attorney need only show that the defendant received personal delivery by mail: PROVIDED FURTHER, That personal service outside of this state in accordance with the provisions of law relating to personal service of summons outside of this state shall relieve the plaintiff from mailing a copy of the summons or process by registered mail as hereinbefore provided. The secretary of state shall forthwith send one of such copies by mail, postage prepaid, addressed to the defendant at the defendant's address, if known to the secretary of state. The court in which the action is brought may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee paid by the plaintiff to the secretary of state shall be taxed as part of his or her costs if he or she prevails in the action. The secretary of state shall keep a record of all such summons and processes, which shall show the day of service.

Passed by the House February 28, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 224

[Senate Bill 5515]

INDUSTRIAL INSURANCE APPEALS

AN ACT Relating to the board of industrial insurance appeals; and amending RCW 51.52.010 and 51.52.104.

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

Sec. 1. RCW 51.52.010 and 1999 c 149 s 1 are each amended to read as follows:

There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active or judicial members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, statewide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized statewide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or until the affected member's term expires, whichever occurs first. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry.

Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized.

Sec. 2. RCW 51.52.104 and 1985 c 314 s 1 are each amended to read as follows:

After all evidence has been presented at hearings conducted by an industrial appeals judge, who shall be an active or judicial member of the Washington state bar association, the industrial appeals judge shall enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The industrial appeals judge shall file the signed original of the proposed decision and order with the board, and copies thereof shall be mailed by the board to each party to the appeal and to each party's attorney or representative of record. Within twenty days, or such further time as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys or representatives of record, any party may file with the board a written petition for review of the same. Filing of a petition for review is perfected by mailing or personally delivering the petition to the board's offices in Olympia. Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts.

Passed by the Senate March 19, 2003.

Passed by the House April 17, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 225

[Senate Bill 5970]

FAMILY LAW HANDBOOK—MARRIAGE LICENSE APPLICANTS

AN ACT Relating to correcting a technical error to clarify that the family law handbook shall be provided when a person applies for a marriage license; and amending RCW 2.56.180.

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

Sec. 1. RCW 2.56.180 and 2002 c 49 s 3 are each amended to read as follows:

(1) The administrator for the courts will create a handbook explaining the sections of Washington law pertaining to the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. The handbook may also be provided in videotape or other electronic form.

(2) The handbook created under subsection (1) of this section will be provided by the county auditor when an individual (~~files a marriage certificate under RCW 26.04.090~~) applies for a marriage license under RCW 26.04.140.

(3) The information contained in the handbook created under subsection (1) of this section will be reviewed and updated annually. The handbook must contain the following information:

(a) Information on prenuptial agreements as contracts and as a means of structuring financial arrangements and other aspects of the marital relationship;

(b) Information on shared parental responsibility for children, including establishing a residential schedule for the child in the event of the dissolution of the marriage;

(c) Information on notice requirements and standards for parental relocation;

(d) Information on child support for minor children;

(e) Information on property rights, including equitable distribution of assets and premarital and postmarital property rights;

(f) Information on spousal maintenance;

(g) Information on domestic violence, child abuse, and neglect, including penalties;

(h) Information on the court process for dissolution;

(i) Information on the effects of dissolution on children;

(j) Information on community resources that are available to separating or divorcing persons and their children.

Passed by the Senate March 16, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 226

[Substitute Senate Bill 5811]

FOSTER CARE—BIRTH FAMILY

AN ACT Relating to the involvement of the birth family in foster care: amending RCW 13.34.260; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that a large group of children spend a significant part of their lives in foster care. Each individual connected to a child in an out-of-home placement must have an abiding appreciation of the seriousness of the child's separation from his or her family and the past, whether that separation is short, long, or permanent in nature. It is the intent of the legislature to recognize and honor the history and the family connections that each child brings to an out-of-home placement.

The legislature finds that creating and sanctioning a connection between a child's birth parents and foster family, when appropriate, can result in better relationships among birth families, children, foster families, and social workers. Creating and sanctioning this connection can result in greater foster placement stability and fewer disruptions for children, as well as greater satisfaction for foster parents and social workers.

Sec. 2. RCW 13.34.260 and 2002 c 52 s 7 are each amended to read as follows:

(1) 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, sibling relationships, ethnicity, and religion shall be 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 shall be integrated through the foster care team.

(2) When a child is placed in out-of-home care foster parents are encouraged to:

(a) Provide consultation to the foster care team based upon their experience with the child placed in their care;

(b) Assist the birth parents by helping them understand their child's needs and correlating appropriate parenting responses;

(c) Participate in educational activities, and enter into community-building activities with birth families and other foster families;

(d) Transport children to family time visits with birth families and assist children and their families in maximizing the purposefulness of family time.

(3) 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; and "birth family" means the persons described in RCW 74.15.020(2)(a).

Passed by the Senate April 21, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 227

[Engrossed Substitute Senate Bill 5779]

DEPENDENT CHILDREN—SIBLINGS

AN ACT Relating to sibling relationships for dependent children; amending RCW 13.34.030, 13.34.130, 13.34.136, 13.34.138, 13.34.200, and 13.34.210; reenacting and amending RCW 13.34.145; 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 importance of emotional ties formed by siblings with each other, especially in those circumstances which warrant court intervention into family relationships. It is the intent of the legislature to encourage the courts and public agencies which deal with families to acknowledge and give thoughtful consideration to

the quality and nature of sibling relationships when intervening in family relationships. It is not the intent of the legislature to create legal obligations or responsibilities between siblings and other family members whether by blood or marriage, step families, foster families, or adopted families that do not already exist. Neither is it the intent of the legislature to mandate sibling placement, contact, or visitation if there is reasonable cause to believe that the health, safety, or welfare of a child or siblings would be jeopardized. Finally, it is not the intent of the legislature to manufacture or anticipate family relationships which do not exist at the time of the court intervention, or to disrupt already existing positive family relationships.

Sec. 2. RCW 13.34.030 and 2002 c 52 s 3 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.

(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 first.

(4) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(5) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) 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.

(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.

(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.

(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.

(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.

(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) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in 25 U.S.C. Sec. 1903(4).

(15) "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 including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

Sec. 3. RCW 13.34.130 and 2002 c 52 s 5 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the 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 determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or the department 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) with whom the child has a relationship and is comfortable; and (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:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(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.

(3) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in ~~((the))~~ a child's best interest to be placed with, have contact with, or have visits with siblings. ~~((The court must consider ordering that such contact or visits take place))~~

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

~~((a))~~ (i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

~~((b) Contact or visitation is in the best interests of each child covered by the court's order; and~~

~~(e))~~ (ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(4) 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 requirements of RCW 13.34.132 are met.

(5) 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, sibling

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.

Sec. 4. RCW 13.34.136 and 2002 c 52 s 6 are each amended 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)~~) (4), 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, what steps the agency will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, 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))~~ parent and child and sibling 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)~~) (4), 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. However, reasonable efforts to ensure visitation and contact between siblings

shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(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.

(3) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(3).

Sec. 5. RCW 13.34.138 and 2001 c 332 s 5 are each amended 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 initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145(3) or 13.34.134. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits. This review shall consider both the agency's and parent's efforts that demonstrate consistent measurable progress over time in meeting the disposition plan requirements. The requirements for the initial review hearing, including the in-court requirement, shall be accomplished within existing resources. 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.

(3) The court shall consider the child's relationship with siblings in accordance with RCW 13.34.130(3).

Sec. 6. RCW 13.34.145 and 2000 c 135 s 4 and 2000 c 122 s 20 are each reenacted and 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, 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, 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 13.34.138 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 13.34.138. 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 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 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, 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) 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 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 13.34.138, 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.

(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.

(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. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(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.

Sec. 7. RCW 13.34.200 and 2000 c 122 s 27 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 an Indian child derives from the child's descent from a member of a federally recognized Indian tribe.

(3) An order terminating the parent-child relationship shall include a statement addressing the status of the child's sibling relationships and the nature and extent of sibling placement, contact, or visits.

Sec. 8. RCW 13.34.210 and 2000 c 122 s 28 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 or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption. 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 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 entered by the court, the court shall review the case every six months until a decree of adoption is entered except for those cases which are reviewed by a citizen review board under chapter 13.70 RCW. The supervising agency shall take reasonable steps to ensure that the child maintains relationships with siblings as provided in RCW 13.34.130(3) and shall report to the court the status and extent of such relationships.

Passed by the Senate April 21, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 228

[Engrossed Senate Bill 5379]
DEPENDENCY HEARINGS

AN ACT Relating to dependency petition hearings; and amending RCW 13.34.115.

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

Sec. 1. RCW 13.34.115 and 2000 c 122 s 12 are each amended to read as follows:

(1) All hearings (~~(may)~~) shall be public, and 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~~) except if the judge finds that excluding the public is in the best interests of the child.

(2) Either parent, or the child's attorney or guardian ad litem, may move to close a hearing at any time. If the judge finds that it is in the best interests of the child the court shall exclude the public.

(3) If the public is excluded from the hearing, the following people may attend the closed hearing unless the judge finds it is not in the best interests of the child:

(a) The child's relatives;

(b) The child's foster parents if the child resides in foster care; and

(c) Any person requested by the parent.

(4) 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.

(5) Any video recording of the proceedings may be released pursuant to RCW 13.50.100, however, the video recording may not be televised, broadcast, or further disseminated to the public.

Passed by the Senate April 21, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 229

[Substitute Senate Bill 5596]
JUVENILE FACILITIES—CUSTODIAL ASSAULTS

AN ACT Relating to custodial assault at juvenile rehabilitation facilities and institutions; and amending RCW 13.40.460.

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

Sec. 1. RCW 13.40.460 and 1999 c 372 s 2 are each amended to read as follows:

The secretary, assistant secretary, or the secretary's designee shall manage and administer the department's juvenile rehabilitation responsibilities, including but not limited to the operation of all state institutions or facilities used for juvenile rehabilitation.

The secretary or assistant secretary shall:

(1) Prepare a biennial budget request sufficient to meet the confinement and rehabilitative needs of the juvenile rehabilitation program, as forecast by the office of financial management;

(2) Create by rule a formal system for inmate classification. This classification system shall consider:

(a) Public safety;

(b) Internal security and staff safety;

(c) Rehabilitative resources both within and outside the department;

(d) An assessment of each offender's risk of sexually aggressive behavior as provided in RCW 13.40.470; and

(e) An assessment of each offender's vulnerability to sexually aggressive behavior as provided in RCW 13.40.470;

(3) Develop agreements with local jurisdictions to develop regional facilities with a variety of custody levels;

(4) Adopt rules establishing effective disciplinary policies to maintain order within institutions;

(5) Develop a comprehensive diagnostic evaluation process to be used at intake, including but not limited to evaluation for substance addiction or abuse, literacy, learning disabilities, fetal alcohol syndrome or effect, attention deficit disorder, and mental health;

(6) Develop placement criteria:

(a) To avoid assigning youth who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as youth assessed as vulnerable to sexual victimization under RCW 13.40.470(1)(c); and

(b) To avoid placing a juvenile offender on parole status who has been assessed as a moderate to high risk for sexually aggressive behavior in a department community residential program with another child who is: (i) Dependent under chapter 13.34 RCW, or an at-risk youth or child in need of services under chapter 13.32A RCW; and (ii) not also a juvenile offender on parole status; ~~(and)~~

(7) Develop a plan to implement, by July 1, 1995:

(a) Substance abuse treatment programs for all state juvenile rehabilitation facilities and institutions;

(b) Vocational education and instruction programs at all state juvenile rehabilitation facilities and institutions; and

(c) An educational program to establish self-worth and responsibility in juvenile offenders. This educational program shall emphasize instruction in character-building principles such as: Respect for self, others, and authority; victim awareness; accountability; work ethics; good citizenship; and life skills; and

(8)(a) The juvenile rehabilitation administration shall develop uniform policies related to custodial assaults consistent with RCW 72.01.045 and 9A.36.100 that are to be followed in all juvenile rehabilitation administration facilities; and

(b) The juvenile rehabilitation administration will report assaults in accordance with the policies developed in (a) of this subsection.

Passed by the Senate April 21, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 230

[Engrossed Substitute House Bill 1904]

MANDATED REPORTERS

AN ACT Relating to the reporting of incidents by mandated reporters; amending RCW 74.34.020 and 74.34.035; and declaring an emergency.

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

Sec. 1. RCW 74.34.020 and 1999 c 176 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) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.

(7) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(8) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(9) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid((s)) or prevent((s)) physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety.

(10) "Permissive reporter" means any person, employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(11) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(12) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(13) "Vulnerable adult" includes a person:

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
 - (b) Found incapacitated under chapter 11.88 RCW; or
 - (c) Who has a developmental disability as defined under RCW 71A.10.020;
- or
- (d) Admitted to any facility; or
 - (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
 - (f) Receiving services from an individual provider.

Sec. 2. RCW 74.34.035 and 1999 c 176 s 5 are each amended to read as follows:

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

~~((H))~~ (2) ~~When~~ there is reason to suspect that sexual ~~((or physical))~~ assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

~~((2))~~ (3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

~~((3))~~ (6) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

~~((4))~~ (7) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

~~((5))~~ (8) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

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 by the House April 21, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 231

[Substitute Senate Bill 5579]

BOARDING HOMES

AN ACT Relating to boarding homes; amending RCW 18.20.020, 18.20.030, 18.20.050, 18.20.125, and 18.20.190; adding new sections to chapter 18.20 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. The legislature finds and declares that, in keeping with the traditional concept of the dignity of the individual in our democratic society, the older citizens of this state and persons with disabilities are entitled to live in comfort, honor, and dignity in a manner that maximizes freedom and independence.

The legislature further finds that licensed boarding homes are an essential component of home and community-based services, and that the noninstitutional nature of this care setting must be preserved and protected by ensuring a regulatory structure that focuses on the actual care and services provided to residents, consumer satisfaction, and continuous quality improvement.

The legislature also finds that residents and consumers of services in licensed boarding homes should be encouraged to exercise maximum independence, and the legislature declares that the state's rules for licensed boarding homes must also be designed to encourage individual dignity, autonomy, and choice.

The legislature further finds that consumers should be afforded access to affordable long-term care services in licensed boarding homes, and believes that care delivery must remain responsive to consumer preferences. Residents and consumers in licensed boarding homes should be afforded the right to self-direct care, and this right should be reflected in the rules governing licensed boarding homes.

Sec. 2. RCW 18.20.020 and 2000 c 47 s 1 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 seven or more (~~(aged persons not related by blood or marriage to the operator))~~ residents after July 1, 2000. However, a boarding home that is licensed to provide board and domiciliary care to three to six (~~(persons))~~ residents on July 1, 2000, 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))~~ (2) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(~~(4))~~ (3) "Secretary" means the secretary of social and health services.

(~~(5))~~ (4) "Department" means the state department of social and health services.

(5) "Domiciliary care" means: Assistance with activities of daily living provided by the boarding home either directly or indirectly; or assuming general responsibility for the safety and well-being of the resident; or intermittent nursing services, if provided directly or indirectly by the boarding home. "Domiciliary care" does not include general observation or preadmission assessment for the purposes of transitioning to a licensed care setting.

(6) "General responsibility for the safety and well-being of the resident" does not include: (a) Emergency assistance provided on an intermittent or nonroutine basis to any nonresident individual; or (b) services customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW. Such services do not include care or supervision.

(7) "Resident" means an individual who: Lives in a boarding home, including those receiving respite care; is not related by blood or marriage to the operator of the boarding home; and by reason of age or disability, receives domiciliary care provided either directly or indirectly by the boarding home.

Sec. 3. RCW 18.20.030 and 1957 c 253 s 3 are each amended to read as follows:

(1) After January 1, 1958, no person shall operate or maintain a boarding home as defined in this chapter within this state without a license under this chapter.

(2) A boarding home license is not required for the housing, or services, that are customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW, or when housing nonresident individuals who, without ongoing assistance from the boarding home, initiate and arrange for services provided by persons other than the boarding home

licensee or the licensee's contractor. This subsection does not prohibit the licensee from furnishing written information concerning available community resources to the nonresident individual or the individual's family members or legal representatives. The licensee may not require the use of any particular service provider.

(3) Residents receiving domiciliary care, directly or indirectly by the boarding home, are not considered nonresident individuals for the purposes of this section.

(4) A boarding home license is not required for emergency assistance when that emergency assistance is not provided on a frequent or routine basis to any one nonresident individual and the nonresident individual resides in independent senior housing, independent living units in continuing care retirement communities, independent living units having common ownership with a licensed boarding home, or other similar living situations including those subsidized by the department of housing and urban development.

Sec. 4. RCW 18.20.050 and 2001 c 193 s 10 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 shall issue a license. If there is a failure to comply with the provisions of this chapter or the standards and rules adopted pursuant thereto, the 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, but not to exceed twelve months, which provisional license shall not be subject to renewal. The department may also place conditions on the license under RCW 18.20.190. 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. 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. 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.

A licensee who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of a boarding home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the licensee, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the licensee relinquished or surrendered the license, without admitting the violations, after receiving notice of the

department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

Sec. 5. RCW 18.20.125 and 2001 c 85 s 2 are each amended to read as follows:

(1) (~~Monitoring should~~) Inspections must be outcome based and responsive to resident complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.

(2) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities 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 license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(3) To the extent funding is available, the licensee, administrator, and their staff 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 adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.

(4) No licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into the 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.

Sec. 6. RCW 18.20.190 and 2001 c 193 s 4 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; ((e))

(e) Suspend admissions to the boarding home by imposing stop placement;
or

(f) Suspend admission of a specific category or categories of residents as related to the violation by imposing a limited stop placement.

(3) When the department orders stop placement or a limited stop placement, the facility shall not admit any new resident until the stop placement or limited 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 or limited stop placement. The department shall terminate the stop placement or limited stop placement when: (a) The violations necessitating the stop placement or limited stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement or new limited stop placement, the previous stop placement or limited stop placement shall remain in effect until the new stop placement or new limited stop placement is imposed.

(4) After a department finding of a violation for which a stop placement or limited stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) 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, limited stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

(6) For the purposes of this section, "limited stop placement" means the ability to suspend admission of a specific category or categories of residents.

NEW SECTION. Sec. 7. A new section is added to chapter 18.20 RCW to read as follows:

(1) The boarding home must assume general responsibility for each resident and must promote each resident's health, safety, and well-being consistent with the resident negotiated care plan.

(2) The boarding home is not required to supervise the activities of a person providing care or services to a resident when the resident, or legal representative, has independently arranged for or contracted with the person and the person is not directly or indirectly controlled or paid by the boarding home. However, the boarding home is required to coordinate services with such person to the extent allowed by the resident, or legal representative, and consistent with the resident's negotiated care plan. Further, the boarding home is required to observe the resident and respond appropriately to any changes in the resident's overall functioning consistent with chapter 70.129 RCW, this chapter, and rules adopted under this chapter.

NEW SECTION. Sec. 8. (1) By December 12, 2004, the department shall report on the payment system for licensed boarding homes to the chairs of the health care committees of both houses of the legislature. The department shall include in the report its findings regarding the validity of the comprehensive assessment tool for categorizing residents into meaningful care and payment groups; its findings regarding the actual costs of providing care and services in each of the care payment levels; and its findings regarding the rates of payment, by level, that are necessary and reasonably related to the costs of providing care and services to medicaid residents.

(2) This section expires December 31, 2004.

NEW SECTION. Sec.9. The department shall by December 12, 2003, report to the chairs of the health care committees of both houses of the legislature, the results of the dementia care pilot program, including a report on the dementia care standards, the benefits of the dementia care program to residents, and the actual costs of providing dementia care and services to residents under the dementia care pilot program.

NEW SECTION. Sec. 10. Within existing funds, the department may implement a two-year statewide informal dispute resolution pilot program in order to determine the efficiencies and effectiveness of a centralized informal dispute resolution program. The provider must be allowed to appear at informal dispute resolution meetings either in person or by telephone. The department shall provide an opportunity for input from a resident or a resident representative.

NEW SECTION. Sec. 11. A new section is added to chapter 18.20 RCW to read as follows:

(1) When a boarding home contracts with the department to provide adult residential care services, enhanced adult residential care services, or assisted living services under chapter 74.39A RCW, the boarding home must hold a medicaid eligible resident's room or unit when short-term care is needed in a nursing home or hospital, the resident is likely to return to the boarding home, and payment is made under subsection (2) of this section.

(2) The medicaid resident's bed or unit shall be held for up to twenty days. The per day bed or unit hold compensation amount shall be seventy percent of the daily rate paid for the first seven days the bed or unit is held for the resident who needs short-term nursing home care or hospitalization. The rate for the

eighth through the twentieth day a bed is held shall be established in rule, but shall be no lower than ten dollars per day the bed or unit is held.

(3) The boarding home may seek third-party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed eighty-five percent of the average daily rate paid to the facility. If third-party payment is not available, the medicaid resident may return to the first available and appropriate bed or unit, if the resident continues to meet the admission criteria under this chapter.

(4) The department shall monitor the use and impact of the policy established under this section and shall report its findings to the appropriate committees of the senate and house of representatives by December 31, 2005.

(5) This section expires June 30, 2006.

NEW SECTION. Sec. 12. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate April 21, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 232

[Engrossed Substitute Senate Bill 5448]

HIGHER EDUCATION—TUITION

AN ACT Relating to tuition-setting authority at institutions of higher education; amending RCW 28B.15.031, 28B.15.066, 28B.15.067, 28B.15.069, and 28B.15.100; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that, as a partner in financing public higher education with students and parents who pay tuition and fees, periodic increases in state funding, state financial aid, and tuition must be authorized to provide high quality higher education for the citizens of Washington. It is the intent of the legislature to address higher education through a cooperative bipartisan effort that includes the legislative and executive branches of government, parents, students, educators, as well as business, labor, and community leaders. The legislature recognizes the importance of keeping the public commitment to public higher education and will continue searching for policies that halt the trend for the growth in tuition revenue to outpace the revenue provided by the state. The legislature believes that a well-educated citizenry is essential to both the private and the public good. The economic and civic health of the state require both an educated citizenry and a well-trained work force. The six-year time limitation authorizing the governing boards to establish tuition rates for all students other than undergraduate resident students will give the legislature, the governor, and the higher education institutions an opportunity to determine whether this policy achieves the goal of maintaining quality and access for all who are eligible for and can benefit from a higher education. Using data from six years of this tuition policy, the state will be able

to identify options for long-term funding of higher education including not only tuition but general fund and financial aid sources.

Sec. 2. RCW 28B.15.031 and 1996 c 142 s 2 are each amended to read as follows:

The term "operating fees" as used in this chapter shall include the fees, other than building fees, charged all students registering at the state's colleges and universities but shall not include fees for short courses, self-supporting degree credit programs and courses, marine station work, experimental station work, correspondence or extension courses, and individual instruction and student deposits or rentals, disciplinary and library fines, which colleges and universities shall have the right to impose, laboratory, gymnasium, health, technology and student activity fees, or fees, charges, rentals, and other income derived from any or all revenue producing lands, buildings and facilities of the colleges or universities heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land, or the appurtenances thereon, or such other special fees as may be established by any college or university board of trustees or regents from time to time. All moneys received as operating fees at any institution of higher education shall be deposited in a local account containing only operating fees revenue and related interest: PROVIDED, That a minimum of three and one-half percent of operating fees shall be retained by the institutions(~~(, except the technical colleges,)~~) for the purposes of RCW 28B.15.820. Local operating fee accounts shall not be subject to appropriation by the legislature or allotment procedures under chapter 43.88 RCW.

Sec. 3. RCW 28B.15.066 and 2000 c 152 s 2 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 RCW 28B.15.915.

Sec. 4. RCW 28B.15.067 and 1997 c 403 s 1 are each amended to read as follows:

(1) Tuition fees shall be established under the provisions of this chapter.

(2) (~~Academic year tuition for full-time students at the state's institutions of higher education for the 1997-98 academic year, other than the summer term, shall be as provided in this subsection.~~)

~~(a) At the University of Washington and Washington State University:~~

~~(i) For resident undergraduate students and other resident students not in graduate, law, or first professional programs, two thousand nine hundred eighty-eight dollars;~~

~~(ii)(A) For nonresident undergraduate students and other nonresident students at the University of Washington not in graduate, law, or first professional programs, ten thousand two hundred seventy-eight dollars;~~

~~(B) For nonresident undergraduate students and other nonresident students at Washington State University not in graduate or first professional programs, nine thousand eight hundred seventy dollars;~~

~~(iii) For resident graduate students, four thousand eight hundred fifty-four dollars;~~

~~(iv) For nonresident graduate students, twelve thousand five hundred eighty-eight dollars;~~

~~(v) For resident law students, five thousand ten dollars;~~

~~(vi) For nonresident law students, twelve thousand nine hundred fifteen dollars;~~

~~(vii) For resident first professional students, eight thousand one hundred twelve dollars; and~~

~~(viii) For nonresident first professional students, twenty one thousand twenty four dollars.~~

~~(b) At the regional universities and The Evergreen State College:~~

~~(i) For resident undergraduate and all other resident students not in graduate programs, two thousand two hundred eleven dollars;~~

~~(ii) For nonresident undergraduate and all other nonresident students not in graduate programs, eight thousand six hundred forty-six dollars;~~

~~(iii) For resident graduate students, three thousand seven hundred twenty-six dollars; and~~

~~(iv) For nonresident graduate students, eleven thousand nine hundred seventy-six dollars.~~

~~(c) At the community colleges:~~

~~(i) For resident students, one thousand three hundred eleven dollars; and~~

~~(ii) For nonresident students, five thousand five hundred eighty-six dollars.~~

~~(3) Academic year tuition for full-time students at the state's institutions of higher education beginning with the 1998-99 academic year, other than the summer term, shall be as provided in this subsection unless different rates are adopted in the omnibus appropriations act.~~

~~(a) At the University of Washington and Washington State University:~~

~~(i) For resident undergraduate students and other resident students not in graduate, law, or first professional programs, three thousand one hundred eight dollars;~~

~~(ii)(A) For nonresident undergraduate students and other nonresident students at the University of Washington not in graduate, law, or first professional programs, eleven thousand one hundred thirty dollars;~~

~~(B) For nonresident undergraduate students and other nonresident students at Washington State University not in graduate or first professional programs, ten thousand two hundred sixty-six dollars;~~

~~(iii) For resident graduate students, five thousand forty-six dollars;~~

~~(iv) For nonresident graduate students, thirteen thousand ninety-two dollars;~~

~~(v) For resident law students, five thousand three hundred seventy-six dollars;~~

~~(vi) For nonresident law students, thirteen thousand seven hundred eighty-two dollars;~~

~~(vii) For resident first professional students, eight thousand four hundred thirty-six dollars; and~~

~~(viii) For nonresident first professional students, twenty-one thousand eight hundred sixty-four dollars.~~

~~(b) At the regional universities and The Evergreen State College:~~

~~(i) For resident undergraduate and all other resident students not in graduate programs, two thousand two hundred ninety-eight dollars;~~

~~(ii) For nonresident undergraduate and all other nonresident students not in graduate programs, eight thousand nine hundred ninety-one dollars;~~

~~(iii) For resident graduate students, three thousand eight hundred seventy-six dollars; and~~

~~(iv) For nonresident graduate students, twelve thousand four hundred fifty-six dollars.~~

~~(c) At the community colleges:~~

~~(i) For resident students, one thousand three hundred sixty-two dollars; and~~

~~(ii) For nonresident students, five thousand eight hundred eight dollars.~~

~~(4) For the 1997-98 and 1998-99 academic years, the University of Washington shall use at least ten percent of the revenue received from the difference between a four percent increase in tuition fees and the actual increase charged to law students to assist needy low and middle income resident law students. For the 1997-98 and 1998-99 academic years, the University of Washington shall use at least ten percent of the revenue received from the difference between a four percent increase in tuition fees and the actual increase charged to nonresident undergraduate students and all other nonresident students not in graduate, law, or first professional programs to assist needy low and middle income resident undergraduate students and all other resident students not enrolled in graduate, law, or first professional programs. This requirement is in addition to the deposit requirements of the institutional aid fund under RCW 28B.15.820.~~

~~(5)) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, reductions or increases in full-time tuition fees for resident undergraduates shall be as provided in the omnibus appropriations act.~~

~~(3) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, the governing boards of the state universities, the regional universities, The Evergreen State College, and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students.~~

~~(4) Academic year tuition for full-time students at the state's institutions of higher education beginning with 2009-10, other than summer term, shall be as charged during the 2008-09 academic year unless different rates are adopted by the legislature.~~

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through ~~((28A.600.395))~~ 28A.600.400.

(6) For the academic years 2003-04 through 2008-09, the University of Washington shall use an amount equivalent to ten percent of all revenues received as a result of law school tuition increases beginning in academic year 2000-01 through academic year 2008-09 to assist needy low and middle income resident law students.

(7) For the academic years 2003-04 through 2008-09, institutions of higher education shall use an amount equivalent to ten percent of all revenues received as a result of graduate academic school tuition increases beginning in academic year 2003-04 through academic year 2008-09 to assist needy low and middle-income resident graduate academic students.

Sec. 5. RCW 28B.15.069 and 1997 c 403 s 2 are each amended to read as follows:

(1) ~~((As used in this section, each of the following subsections is a separate tuition category:~~

~~(a) Resident undergraduate students and all other resident students not in first professional, graduate, or law programs;~~

~~(b) Nonresident undergraduate students and all other nonresident students not in first professional graduate or law programs;~~

~~(c) Resident graduate students;~~

~~(d) Resident law students;~~

~~(e) Nonresident graduate students;~~

~~(f) Nonresident law students;~~

~~(g) Resident first professional students; and~~

~~(h) Nonresident first professional students.~~

~~(2) Unless the context clearly requires otherwise, as used in this section "first professional programs" means programs leading to one of the following degrees: Doctor of medicine, doctor of dental surgery, or doctor of veterinary medicine.~~

~~(3))~~ The building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition for each tuition category in the 1994-95 academic year, rounded up to the nearest half percent.

~~((4))~~ (2) The governing boards of each institution of higher education, except for the technical colleges, shall charge to and collect from each student a services and activities fee. A governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in student tuition fees for ~~((the applicable tuition category))~~ resident undergraduate students: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. These rate adjustments may exceed the fiscal growth factor. For the 2003-04 academic year, the services and activities fee shall be based upon the resident undergraduate services and activities fee in 2002-03. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

~~((5))~~ (3) Tuition and services and activities fees consistent with subsection ~~((4))~~ (2) of this section shall be set by the state board for community and technical colleges for community college summer school students unless the community college charges fees in accordance with RCW 28B.15.515.

~~((6))~~ (4) Subject to the limitations of RCW 28B.15.910, each governing board of a community college may charge such fees for ungraded courses, noncredit courses, community services courses, and self-supporting courses as it, in its discretion, may determine, consistent with the rules of the state board for community and technical colleges.

Sec. 6. RCW 28B.15.100 and 1999 c 321 s 2 are each amended to read as follows:

(1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall charge to and collect from each of the students registering at the particular institution for any quarter or semester such tuition fees and services and activities fees, and other fees as such board shall in its discretion determine. The total of all fees shall be rounded to the nearest whole dollar amount: PROVIDED, That such tuition fees ~~((for other than the summer term))~~ shall be ~~((in the amounts for the respective institutions as otherwise set forth in))~~ established in accordance with RCW 28B.15.067.

(2) Part-time students shall be charged tuition and services and activities fees proportionate to full-time student rates established for residents and nonresidents: PROVIDED, That except for students registered at community colleges, students registered for fewer than two credit hours shall be charged tuition and services and activities fees at the rate established for two credit hours: PROVIDED FURTHER, That, subject to the limitations of RCW 28B.15.910, residents of Idaho or Oregon who are enrolled in community college district number twenty for six or fewer credits during any quarter or semester may be exempted from payment of all or a portion of the nonresident tuition fees differential upon a declaration by the higher education coordinating board that it finds Washington residents from the community college district are afforded substantially equivalent treatment by such other states.

(3) Full-time students registered for more than eighteen credit hours shall be charged an additional operating fee for each credit hour in excess of eighteen hours at the applicable established per credit hour tuition fee rate for part-time students: PROVIDED, That, subject to the limitations of RCW 28B.15.910, the governing boards of the state universities and the community colleges may exempt all or a portion of the additional charge, for students who are registered exclusively in first professional programs in medicine, dental medicine, veterinary medicine, doctor of pharmacy, or law, or who are registered exclusively in required courses in vocational preparatory programs.

Passed by the Senate March 28, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 233

[Engrossed Senate Bill 5676]

HIGHER EDUCATION—FINANCIAL ASSISTANCE

AN ACT Relating to higher education financial assistance; and amending RCW 28B.101.005, 28B.101.010, 28B.101.020, 28B.101.040, and 28B.119.010.

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

Sec. 1. RCW 28B.101.005 and 1990 c 288 s 2 are each amended to read as follows:

The legislature finds that many individuals in the state of Washington have attended college and received an associate of arts or associate of science degree, or ~~((its))~~ the equivalent, but are placebound.

The legislature intends to establish an educational opportunity grant program for placebound students who have completed an associate of arts or associate of science degree, or ~~((its))~~ the equivalent, in an effort to increase their participation in and completion of upper-division programs.

Sec. 2. RCW 28B.101.010 and 1990 c 288 s 3 are each amended to read as follows:

The educational opportunity grant program is hereby created ~~((as a demonstration project))~~ to serve placebound financially needy students by assisting them to obtain a baccalaureate degree at public and private institutions of higher education ~~((which have the capacity to accommodate such students within existing educational programs and facilities))~~ approved for participation by the higher education coordinating board.

Sec. 3. RCW 28B.101.020 and 1990 c 288 s 4 are each amended to read as follows:

(1) For the purposes of this chapter, "placebound" means unable to ~~((relocate to))~~ complete a college program because of family or employment commitments, health concerns, monetary inability, or other similar factors.

(2) To be eligible for an educational opportunity grant, applicants must be placebound residents of the state of Washington as defined in RCW 28B.15.012(2) (a) through (d), who: (a) Are needy students as defined in RCW 28B.10.802(3); and ((who)) (b) have completed the associate of arts or associate of science degree or ((its)) the equivalent. A placebound resident is one who may be influenced by the receipt of an enhanced student financial aid award to ~~((attend an institution that has existing unused capacity rather than attend a branch campus established pursuant to chapter 28B.45 RCW))~~ complete a baccalaureate degree at an eligible institution. An eligible placebound applicant is further defined as a person ~~((whose residence is located in an area served by a branch campus who, because of family or employment commitments, health concerns, monetary need, or other similar factors,))~~ who would be unable to complete ((an upper-division)) a baccalaureate course of study but for receipt of an educational opportunity grant.

Sec. 4. RCW 28B.101.040 and 2002 c 186 s 3 are each amended to read as follows:

Grants may be used by eligible participants to attend any public or private college or university in the state of Washington that is accredited by an accrediting association recognized by rule of the higher education coordinating board for the program and that ~~((has an existing unused capacity. Grants shall~~

~~not be used to attend any branch campus or educational program established under chapter 28B.45 RCW))~~ complies with eligibility criteria established by rule of the higher education coordinating board. The participant shall not be eligible for a grant if it will be used for any programs that include religious worship, exercise, or instruction or to pursue a degree in theology. Each participating student may receive up to two thousand five hundred dollars per academic year, not to exceed the student's demonstrated financial need for the course of study. ~~((Resident students as defined in RCW 28B.15.012(2)(f) are not eligible for grants under this chapter.))~~

Sec. 5. RCW 28B.119.010 and 2002 c 204 s 2 are each amended to read as follows:

The higher education coordinating board shall design the Washington promise scholarship program based on the following parameters:

(1) Scholarships shall be awarded to students graduating from public and approved private high schools under chapter 28A.195 RCW ~~((and)),~~ students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a GED certificate, who meet both an academic and a financial eligibility criteria.

(a) Academic eligibility criteria shall be defined as follows:

(i) Beginning with the graduating class of 2002, students graduating from public and approved private high schools under chapter 28A.195 RCW must be in the top fifteen percent of their graduating class, as identified by each respective high school at the completion of the first term of the student's senior year; or

(ii) Students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, ~~((and))~~ students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a GED certificate, must equal or exceed a cumulative scholastic assessment test I score of twelve hundred on their first attempt or must equal or exceed a composite American college test score of twenty-seven on their first attempt.

(b) To meet the financial eligibility criteria, a student's family income shall not exceed one hundred thirty-five percent of the state median family income adjusted for family size, as determined by the higher education coordinating board for each graduating class. Students not meeting the eligibility requirements for the first year of scholarship benefits may reapply for the second year of benefits, but must still meet the income standard set by the board for the student's graduating class.

(2) Promise scholarships are not intended to supplant any grant, scholarship, or tax program related to postsecondary education. If the board finds that promise scholarships supplant or reduce any grant, scholarship, or tax program for categories of students, then the board shall adjust the financial eligibility criteria or the amount of scholarship to the level necessary to avoid supplanting.

(3) Within available funds, each qualifying student shall receive two consecutive annual awards, the value of each not to exceed the full-time annual resident tuition rates charged by Washington's community colleges. The higher education coordinating board shall award scholarships to as many students as possible from among those qualifying under this section.

(4) By October 15th of each year, the board shall determine the award amount of the scholarships, after taking into consideration the availability of funds.

(5) The scholarships may only be used for undergraduate coursework at accredited institutions of higher education in the state of Washington.

(6) The scholarships may be used for undergraduate coursework at Oregon institutions of higher education that are part of the border county higher education opportunity project in RCW 28B.80.806 when those institutions offer programs not available at accredited institutions of higher education in Washington state.

(7) The scholarships may be used for college-related expenses, including but not limited to, tuition, room and board, books, and materials.

(8) The scholarships may not be awarded to any student who is pursuing a degree in theology.

(9) The higher education coordinating board may establish satisfactory progress standards for the continued receipt of the promise scholarship.

(10) The higher education coordinating board shall establish the time frame within which the student must use the scholarship.

Passed by the Senate April 25, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 234

[Substitute Senate Bill 5358]

HIGH SCHOOL DIPLOMAS—KOREAN CONFLICT VETERANS

AN ACT Relating to high school diplomas for veterans of the Korean conflict; amending RCW 28A.230.120; and declaring an emergency.

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

Sec. 1. RCW 28A.230.120 and 2002 c 35 s 1 are each amended to read as follows:

(1) School districts shall issue diplomas to students signifying graduation from high school upon the students' satisfactory completion of all local and state graduation requirements. Districts shall grant students the option of receiving a final transcript in addition to the regular diploma.

(2) School districts or schools of attendance shall establish policies and procedures to notify senior students of the transcript option and shall direct students to indicate their decisions in a timely manner. School districts shall make appropriate provisions to assure that students who choose to receive a copy of their final transcript shall receive such transcript after graduation.

(3)(a) A school district may issue a high school diploma to a person who:

(i) Is an honorably discharged member of the armed forces of the United States;

(ii) Was scheduled to graduate from high school (~~(after 1940 and before 1951)~~) in the years 1940 through 1955; and

(iii) Left high school before graduation to serve in World War II or the Korean conflict.

(b) A school district may issue a diploma to or on behalf of a person otherwise eligible under (a) of this subsection notwithstanding the fact that the person holds a high school equivalency certification or is deceased.

(c) The superintendent of public instruction shall adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran under this subsection (3). The superintendent of public instruction shall specify what constitutes acceptable evidence of eligibility for a diploma.

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 by the Senate April 17, 2003.

Passed by the House April 9, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 235

[Engrossed Substitute House Bill 1509]

ECONOMIC DEVELOPMENT COMMISSION

AN ACT Relating to establishing the Washington state economic development commission to replace the governor's small business improvement council; amending RCW 43.330.040; and adding a new chapter to Title 43 RCW.

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

NEW SECTION. Sec. 1. The legislature finds that Washington's innovation and trade-driven economy has provided tremendous opportunities for citizens of the state, but that there is no guarantee that globally competitive firms will continue to grow and locate in the state. The legislature also finds that developing an effective economic development strategy for the state and operating effective economic development programs, including work force training, small business assistance, technology transfer, and export assistance, are vital to the state's efforts to encourage employment growth, increase state revenues, and generate economic well-being. In addition, the legislature finds that there is a need for responsive and consistent involvement of the private sector in the state's economic development efforts. It is the intent of the legislature to create an economic development commission that will develop and update the state's economic development strategy and performance measures and provide advice to and oversight of the department of community, trade, and economic development.

NEW SECTION. Sec. 2. (1) The Washington state economic development commission is established to oversee the economic development strategies and policies of the department of community, trade, and economic development.

(2)(a) The Washington state economic development commission shall consist of at least seven and no more than nine members appointed by the governor.

(b) In making the appointments, the governor shall consult with organizations that have an interest in economic development, including, but not limited to, industry associations, labor organizations, minority business associations, economic development councils, chambers of commerce, port

associations, tribes, and the chairs of the legislative committees with jurisdiction over economic development.

(c) The members shall be representative of the geographic regions of the state, including eastern and central Washington, as well as represent the ethnic diversity of the state. Representation shall derive primarily from the private sector, including, but not limited to, existing and emerging industries, small businesses, women-owned businesses, and minority-owned businesses, but other sectors of the economy that have experience in economic development, including labor organizations and nonprofit organizations, shall be represented as well. A minimum of seventy-five percent of the members shall represent the private sector. Members of the commission shall serve statewide interests while preserving their diverse perspectives, and shall be recognized leaders in their fields with demonstrated experience in disciplines related to economic development.

(3) Members appointed by the governor shall serve at the pleasure of the governor for three-year terms, except that through June 30, 2004, members currently serving on the economic development commission created by executive order may continue to serve at the pleasure of the governor. Of the initial members appointed to serve after June 30, 2004, two members shall serve one-year terms, three members shall serve two-year terms, and the remainder of the commission members shall serve three-year terms.

(4) The commission chair shall be selected from among the appointed members by the majority vote of the members.

(5) The commission may establish committees as it desires, and may invite nonmembers of the commission to serve as committee members.

(6) The commission may adopt rules for its own governance.

NEW SECTION. Sec. 3. The Washington state economic development commission shall perform the following duties:

(1) Review and periodically update the state's economic development strategy, including implementation steps, and performance measures, and perform an annual evaluation of the strategy and the effectiveness of the state's laws, policies, and programs which target economic development;

(2) Provide policy, strategic, and programmatic direction to the department of community, trade, and economic development regarding strategies to:

(a) Promote business retention, expansion, and creation within the state;

(b) Promote the business climate of the state and stimulate increased national and international investment in the state;

(c) Promote products and services of the state;

(d) Enhance relationships and cooperation between local governments, economic development councils, federal agencies, state agencies, and the legislature;

(e) Integrate economic development programs, including work force training, technology transfer, and export assistance; and

(f) Make the funds available for economic development purposes more flexible to meet emergent needs and maximize opportunities;

(3) Identify policies and programs to assist Washington's small businesses;

(4) Assist the department of community, trade, and economic development with procurement and deployment of private funds for business development,

retention, expansion, and recruitment as well as other economic development efforts;

(5) Meet with the chairs and ranking minority members of the legislative committees from both the house of representatives and the senate overseeing economic development policies; and

(6) Make a biennial report to the appropriate committees of the legislature regarding the commission's review of the state's economic development policy, the commission's recommendations, and steps taken by the department of community, trade, and economic development to implement the recommendations. The first report is due by December 31, 2004.

NEW SECTION. Sec. 4. (1) The Washington state economic development commission shall receive the necessary staff support from the staff resources of the governor, the department of community, trade, and economic development, and other state agencies as appropriate, and within existing resources and operations.

(2) Creation of the Washington state economic development commission shall not be construed to modify any authority or budgetary responsibility of the governor or the department of community, trade, and economic development.

**Sec. 5. RCW 43.330.040 and 1993 c 280 s 6 are each amended to read as follows:*

(1) The director shall supervise and administer the activities of the department and shall advise the governor and the legislature with respect to community and economic development matters affecting the state.

(2) In addition to other powers and duties granted to the director, the director shall have the following powers and duties:

(a) Work with the Washington state economic development commission established in section 2 of this act to develop and implement economic development policies consistent with the advice of the commission:

(b) Enter into contracts on behalf of the state to carry out the purposes of this chapter;

~~((b))~~ (c) Act for the state in the initiation of or participation in any multigovernmental program relative to the purpose of this chapter;

~~((c))~~ (d) Accept and expend gifts and grants, whether such grants be of federal or other funds;

~~((d))~~ (e) Appoint such deputy directors, assistant directors, and up to seven special assistants as may be needed to administer the department. These employees are exempt from the provisions of chapter 41.06 RCW;

~~((e))~~ (f) Prepare and submit budgets for the department for executive and legislative action;

~~((f))~~ (g) Submit recommendations for legislative actions as are deemed necessary to further the purposes of this chapter;

~~((g))~~ (h) Adopt rules in accordance with chapter 34.05 RCW and perform all other functions necessary and proper to carry out the purposes of this chapter;

~~((h))~~ (i) Delegate powers, duties, and functions as the director deems necessary for efficient administration, but the director shall be responsible for the official acts of the officers and employees of the department; and

~~((i))~~ (j) Perform other duties as are necessary and consistent with law.

(3) When federal or other funds are received by the department, they shall be promptly transferred to the state treasurer and thereafter expended only upon the approval of the director.

(4) The director may request information and assistance from all other agencies, departments, and officials of the state, and may reimburse such agencies, departments, or officials if such a request imposes any additional expenses upon any such agency, department, or official.

(5) The director shall, in carrying out the responsibilities of office, consult with governmental officials, private groups, and individuals and with officials of other states. All state agencies and their officials and the officials of any political subdivision of the state shall cooperate with and give such assistance to the department, including the submission of requested information, to allow the department to carry out its purposes under this chapter.

(6) The director may establish additional advisory or coordinating groups with the legislature, within state government, with state and other governmental units, with the private sector and nonprofit entities or in specialized subject areas as may be necessary to carry out the purposes of this chapter.

(7) The internal affairs of the department shall be under the control of the director in order that the director may manage the department in a flexible and intelligent manner as dictated by changing contemporary circumstances. Unless specifically limited by law, the director shall have complete charge and supervisory powers over the department. The director may create such administrative structures as the director deems appropriate, except as otherwise specified by law, and the director may employ such personnel as may be necessary in accordance with chapter 41.06 RCW, except as otherwise provided by law.

**Sec. 5 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 6. Sections 1 through 4 of this act constitute a new chapter in Title 43 RCW.

Passed by the House April 22, 2003.

Passed by the Senate April 9, 2003.

Approved by the Governor May 12, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 12, 2003.

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

"I am returning herewith, without my approval as to section 5, Engrossed Substitute House Bill No. 1509 entitled:

"AN ACT Relating to establishing the Washington state economic development commission to replace the governor's small business improvement council;"

This bill establishes in statute the Washington Economic Development Commission. I established this commission by executive order September 25, 2002, and fully support the ongoing work of the Commission. I also support making the Commission more permanent by codifying its creation and responsibilities in statute.

Section 5 of the bill requires the director of the Department of Community, Trade, and Economic Development to work with the Commission to develop and implement economic development policies consistent with the advice of the Commission. This section reduces the authority of the

governor over an executive cabinet agency. While I clearly welcome the advice and counsel of the Commission, policy authority over executive agencies must ultimately rest with the governor.

For this reason, I have vetoed section 5 of Engrossed Substitute House Bill No. 1509.

With the exception of section 5, Engrossed Substitute House Bill No. 1509 is approved"

CHAPTER 236

[Substitute Senate Bill 5933]

CIGARETTE TAX CONTRACTS

AN ACT Relating to cigarette tax contracts; and amending RCW 43.06.460.

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

Sec. 1. RCW 43.06.460 and 2002 c 87 s 1 are each amended to read as follows:

(1) The governor is authorized to enter into cigarette tax contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, ~~((and))~~ the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, and the Kalispel Tribe. Each contract adopted under this section shall provide that the tribal cigarette tax rate be one hundred percent of the state cigarette and state and local sales and use taxes within three years of enacting the tribal tax and shall be set no lower than eighty percent of the state cigarette and state and local sales and use taxes during the three-year phase-in period. The three-year phase-in period shall be shortened by three months each quarter the number of cartons of nontribal manufactured cigarettes is at least ten percent or more than the quarterly average number of cartons of nontribal manufactured cigarettes from the six-month period preceding the imposition of the tribal tax under the contract. Sales at a retailer operation not in existence as of the date a tribal tax under this section is imposed are subject to the full rate of the tribal tax under the contract. The tribal cigarette tax is in lieu of the state cigarette and state and local sales and use taxes, as provided in RCW 43.06.455(3).

(2) A cigarette tax contract under this section is subject to RCW 43.06.455.

Passed by the Senate March 16, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 237

[Substitute Senate Bill 5737]

ABANDONED PROPERTY

AN ACT Relating to reporting abandoned property; and amending RCW 63.29.170 and 63.29.180.

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

Sec. 1. RCW 63.29.170 and 1996 c 45 s 2 are each amended to read as follows:

(1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property ~~((of the))~~ with a value of ~~((twenty-five))~~ more than fifty dollars ~~((or more))~~ presumed abandoned under this chapter;

(b) In the case of unclaimed funds of ~~((twenty-five))~~ more than fifty dollars ~~((or more))~~ held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items ~~((of))~~ with a value ~~((under twenty-five))~~ of fifty dollars or less each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, ~~((he))~~ the holder shall file with ~~((his))~~ the report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1st of each year and shall include all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On written request by any person required to file a report, the department may postpone the reporting date.

(5) After May 1st, but before August 1st, of each year in which a report is required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at ~~((his))~~ the last known address informing him or her that the holder is in possession of property subject to this chapter if:

~~((+))~~ (a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate~~((;))~~;

~~((+))~~ (b) The claim of the apparent owner is not barred by the statute of limitations~~((;))~~; and

~~((iii))~~ (c) The property has a value of ~~((seventy-five))~~ more than seventy-five dollars ~~((or more))~~.

Sec. 2. RCW 63.29.180 and 1993 c 498 s 9 are each amended to read as follows:

(1) The department shall cause a notice to be published not later than ~~((September))~~ November 1st, immediately following the report required by RCW 63.29.170 ~~((at least once a week for two consecutive weeks))~~ in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

(2) The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

(a) The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection (1) of this section; and

(b) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the department.

(3) The department is not required to publish in the notice any items of ~~((less than seventy-five))~~ seventy-five dollars or less unless the department considers their publication to be in the public interest.

(4) Not later than September 1st, immediately following the report required by RCW 63.29.170, the department shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property ~~((of the))~~ with a value of ~~((seventy-five))~~ more than seventy-five dollars ~~((or more))~~ presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the department has a last known address.

(5) The mailed notice must contain:

(a) A statement that, according to a report filed with the department, property is being held to which the addressee appears entitled; and

(b) The name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder.

(6) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under RCW 63.29.040.

Passed by the Senate April 22, 2003.

Passed by the House April 17, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 238

[House Bill 1473]

VACANCIES IN OFFICE

AN ACT Relating to filling vacancies in office; amending RCW 36.16.110, 36.32.0558, 36.32.070, and 42.12.040; and providing a contingent effective date.

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

Sec. 1. RCW 36.16.110 and 1963 c 4 s 36.16.110 are each amended to read as follows:

The (~~board of~~) county (~~commissioners~~) legislative authority in each county shall, at its next regular or special meeting after being appraised of any vacancy in any county, township, precinct, or road district office of the county, fill the vacancy by the appointment of some person qualified to hold such office, and the officers thus appointed shall hold office until the next general election, and until their successors are elected and qualified.

If a vacancy occurs in a partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29.01.135 and shall continue through the term for which he or she was elected.

Sec. 2. RCW 36.32.0558 and 1990 c 252 s 6 are each amended to read as follows:

Vacancies on a board of county commissioners consisting of five members shall be filled as provided in RCW 36.32.070, except that:

(1) Whenever there are three or more vacancies, the governor shall appoint one or more commissioners until there are a total of three commissioners;

(2) Whenever there are two vacancies, the three commissioners shall fill one of the vacancies; (~~and~~)

(3) Whenever there is one vacancy, the four commissioners shall fill the single vacancy; ~~and~~

(4) Whenever there is a vacancy after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29.01.135 and shall continue through the term for which he or she was elected.

Sec. 3. RCW 36.32.070 and 1990 c 252 s 7 are each amended to read as follows:

Whenever there is a vacancy in the board of county commissioners, except as provided in RCW 36.32.0558, it shall be filled as follows:

(1) If there are three vacancies, the governor of the state shall appoint two of the officers. The two commissioners thus appointed shall then meet and select the third commissioner. If the two appointed commissioners fail to agree upon selection of the third after the expiration of five days from the day they were appointed, the governor shall appoint the remaining commissioner.

(2) Whenever there are two vacancies in the office of county commissioner, the governor shall appoint one commissioner, and the two commissioners then in office shall appoint the third commissioner. If they fail to agree upon a selection after the expiration of five days from the day of the governor's appointment, the governor shall appoint the third commissioner.

(3) Whenever there is one vacancy in the office of county commissioner, the two remaining commissioners shall fill the vacancy. If the two commissioners fail to agree upon a selection after the expiration of five days from the day the vacancy occurred, the governor shall appoint the third commissioner.

(4) Whenever there is a vacancy in the office of county commissioner after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29.01.135 and shall continue through the term for which he or she was elected.

Sec. 4. RCW 42.12.040 and 2002 c 108 s 2 are each amended to read as follows:

(1) If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the sixth Tuesday prior to the primary for the next general election following the occurrence of the vacancy, a successor shall be elected to that office at that general election. Except during the last year of the term of office, if such a vacancy occurs on or after the sixth Tuesday prior to the primary for that general election, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section.

(2) If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29.01.135 and shall continue through the term for which he or she was elected.

NEW SECTION. Sec. 5. This act takes effect January 1, 2004, if the proposed amendment to Article II, section 15 of the state Constitution (HJR —) is validly submitted to and is approved and ratified by the voters at a general election held in November 2003. If the proposed amendment is not approved and ratified, this act is void in its entirety.

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 239

[Senate Bill 5477]

RECORDING OFFICERS—ENDORSEMENT DELIVERY

AN ACT Relating to delivery of endorsements by recording officers; and amending RCW 65.04.090.

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

Sec. 1. RCW 65.04.090 and 1996 c 229 s 5 are each amended to read as follows:

The recording officer must also endorse upon such an instrument, paper, or notice, the time when and the book and page in which it is recorded, and must

thereafter either electronically transmit or deliver it(~~(, upon request,)~~) to the party leaving the same for record or to the address on the face of the document.

Passed by the Senate April 22, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 240

[House Bill 2073]

LOCAL GOVERNMENT RECORDS—DISPOSAL

AN ACT Relating to disposing of local government records; and amending RCW 40.14.070.

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

Sec. 1. RCW 40.14.070 and 1999 c 326 s 2 are each amended to read as follows:

(1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982,

shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.17.020 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

(a) The records are seventy years old or more;

(b) The local records committee has approved the destruction of the public records; and

(c) The state archivist has determined that the public records have no historic interest.

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 241

[Substitute Senate Bill 5545]

VITAL RECORDS—COPY FEES

AN ACT Relating to fees for certified copies of vital records; and amending RCW 70.58.107.

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

Sec. 1. RCW 70.58.107 and 1997 c 223 s 1 are each amended to read as follows:

The department of health shall charge a fee of ~~((thirteen))~~ seventeen dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration.

The department shall keep a true and correct account of all fees received and turn the fees over to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation ~~((, except that local registrars shall charge thirteen dollars for the first copy of a death certificate and eight dollars for each additional copy of the same death certificate when the additional copies are ordered at the same time as the first copy))~~ except in cases where payment is made by credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication. Payment by these electronic methods may be subject to an additional fee consistent with the requirements established by RCW 36.29.190. All such fees collected, except for ~~((five))~~ seven dollars of each fee collected for the issuance of ~~((a certified copy))~~ birth certificates and first copies of death certificates and fourteen dollars of each fee collected for additional copies of the same death certificate ordered at the same time as the first copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall turn ~~((five))~~ seven dollars of the fees collected for birth certificates and first copies of death certificates and fourteen dollars of the fee collected for additional copies of death certificates over to the state treasurer on or before the first day of January, April, July, and October. All but five dollars of the fees turned over to the state treasurer by local registrars shall be paid to the department of health for the purpose of developing and maintaining the state vital records systems, including a web-based electronic death registration system.

Five dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations' account established by RCW 43.79.445.

Passed by the Senate April 26, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 12, 2003.
Filed in Office of Secretary of State May 12, 2003.

CHAPTER 242

[Substitute Senate Bill 5434]

ELECTRICIANS—LICENSE EXCEPTIONS

AN ACT Relating to electricians; and amending RCW 19.28.091.

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

Sec. 1. RCW 19.28.091 and 2001 c 211 s 6 are each amended to read as follows:

(1) No license under the provision of this chapter shall be required from any utility or any person, firm, partnership, corporation, or other entity employed by a utility because of work in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of a utility and used for transmission or distribution of electricity from the source of supply to the point of contact at the premises and/or property to be supplied and service connections and meters and other apparatus or appliances used in the measurement of the consumption of electricity by the customer.

(2) No license under the provisions of this chapter shall be required from any utility because of work in connection with the installation, repair, or maintenance of the following:

(a) Lines, wires, apparatus, or equipment used in the lighting of streets, alleys, ways, or public areas or squares;

(b) Lines, wires, apparatus, or equipment owned by a commercial, industrial, or public institution customer that are an integral part of a transmission or distribution system, either overhead or underground, providing service to such customer and located outside the building or structure: PROVIDED, That a utility does not initiate the sale of services to perform such work;

(c) Lines and wires, together with ancillary apparatus, and equipment, owned by a customer that is an independent power producer who has entered into an agreement for the sale of electricity to a utility and that are used in transmitting electricity from an electrical generating unit located on premises used by such customer to the point of interconnection with the utility's system.

(3) Any person, firm, partnership, corporation, or other entity licensed under RCW 19.28.041 may enter into a contract with a utility for the performance of work under subsection (2) of this section.

(4) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of the work of installing and repairing ignition or lighting systems for motor vehicles.

(5) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of work in connection with the installation, repair, or maintenance of wires and equipment, and installations thereof, exempted in RCW 19.28.010.

(6) The department may by rule exempt from licensing requirements under this chapter work performed on premanufactured electric power generation equipment assemblies and control gear involving the testing, repair,

modification, maintenance, or installation of components internal to the power generation equipment, the control gear, or the transfer switch.

(7) This chapter does not require an electrical contractor license if: (a) An appropriately certified electrician or a properly supervised certified electrical trainee is performing the installation, repair, or maintenance of wires and equipment for a nonprofit corporation that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501 (c)(3) or a nonprofit religious organization; (b) the certified electrician or certified electrical trainee is not compensated for the electrical work; and (c) the value of the electrical work does not exceed thirty thousand dollars.

Passed by the Senate April 22, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 243

[Substitute Senate Bill 5305]

CONSTRUCTION AGGREGATES

AN ACT Relating to the availability of construction aggregates used in transportation and construction projects; 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 not all mineral resources of long-term commercial significance can be used as construction aggregates and not all regions of the state have sufficient supplies of construction aggregates. As a result, projects may not be completed timely, economically, and with the quality of aggregates necessary for long-term durability.

(2)(a) A committee is created to study the state's need for aggregate as recognized under subsection (1) of this section. The committee is comprised of the following:

(i) The state geologist, representing the department of natural resources, who shall serve as chair;

(ii) A representative of the association of general contractors;

(iii) A representative of the governor;

(iv) A representative of the Washington chapter of the American public works association;

(v) An operating engineer representing the building and trades council;

(vi) A representative of the aggregate and concrete association; and

(vii) Representatives from three counties, including a county from east of the crest of the Cascade mountains, a highly urbanized county with aggregate supplies and affiliated industries within its urban area, and a rural county with aggregate supplies and affiliated industries within its agricultural, forested, or other rural areas.

(b) The committee shall:

(i) Determine whether the goals and requirements under chapter 36.70A RCW are being met with regard to the identification, designation, and supply of aggregate necessary to meet the twenty-year comprehensive plans and whether

sufficient quality and quantity of aggregate is available to meet the transportation elements of the department of transportation, county, city, or municipal projects, and private projects;

(ii) Determine whether environmental review procedures allow the efficient processing of permit applications without reducing environmental protection and without undermining the expectation that a successful project will receive a permit in a timely manner;

(iii) Ensure the state has competitive and efficient industries by evaluating and identifying areas of redundant, duplicative, and costly regulations and suggesting remedies to eliminate those inefficient impediments;

(iv) Consider how the aggregate and affiliated industries should be regulated; and

(v) No later than December 15, 2003, prepare and submit to the legislature its findings and any legislation necessary.

(3) The department of transportation and the department of community, trade, and economic development shall provide technical and staff support from existing staff.

Passed by the Senate April 21, 2003.

Passed by the House April 10, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 244

[Engrossed Substitute Senate Bill 5977]

PERSONAL WIRELESS SERVICE FACILITIES—HIGHWAY RIGHTS OF WAY

AN ACT Relating to the use of state highway rights of way for the deployment of personal wireless service facilities; amending RCW 47.04.010 and 47.52.001; adding a new section to chapter 47.44 RCW; adding a new section to chapter 47.04 RCW; and creating new sections.

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

****NEW SECTION. Sec. 1. Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development. The use of all state highway rights of way must be permitted for the deployment of personal wireless service facilities.***

**Sec. 1 was vetoed. See message at end of chapter.*

Sec. 2. RCW 47.04.010 and 1975 c 62 s 50 are each amended to read as follows:

The following words and phrases, wherever used in this title, shall have the meaning as in this section ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part:

(1) "Alley." A highway within the ordinary meaning of alley not designated for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Arterial highway." Every highway, as herein defined, or portion thereof designated as such by proper authority;

(3) "Business district." The territory contiguous to and including a highway, as herein defined, when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway;

(4) "Center line." The line, marked or unmarked parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(5) "Center of intersection." The point of intersection of the center lines of the roadways of intersecting highways;

(6) "City street." Every highway as herein defined, or part thereof located within the limits of incorporated cities and towns, except alleys;

(7) "Combination of vehicles." Every combination of motor vehicle and motor vehicle, motor vehicle and trailer, or motor vehicle and semitrailer;

(8) "Commercial vehicle." Any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire;

(9) "County road." Every highway as herein defined, or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway, or branch thereof;

(10) "Crosswalk." The portion of the roadway between the intersection area and a prolongation or connection of the farthest sidewalk line or in the event there are no sidewalks then between the intersection area and a line ten feet therefrom, except as modified by a marked crosswalk;

(11) "Highway." Every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Intersection area." (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict;

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection;

(c) The junction of an alley with a street or highway shall not constitute an intersection;

~~((12))~~ (13) "Intersection control area." The intersection area as herein defined, together with such modification of the adjacent roadway area as results from the arc or curb corners and together with any marked or unmarked crosswalks adjacent to the intersection;

~~((13))~~ (14) "Laned highway." A highway the roadway of which is divided into clearly marked lanes for vehicular traffic;

((14)) (15) "Local authorities." Every county, municipal, or other local public board or body having authority to adopt local police regulations under the Constitution and laws of this state;

((15)) (16) "Marked crosswalk." Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof;

((16)) (17) "Metal tire." Every tire, the bearing surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material;

((17)) (18) "Motor truck." Any motor vehicle, as herein defined, designed or used for the transportation of commodities, merchandise, produce, freight, or animals;

((18)) (19) "Motor vehicle." Every vehicle, (as herein defined, which is in itself a self-propelled unit;

((19)) (20) "Multiple lane highway." Any highway the roadway of which is of sufficient width to reasonably accommodate two or more separate lanes of vehicular traffic in the same direction, each lane of which shall be not less than the maximum legal vehicle width, and whether or not such lanes are marked;

((20)) (21) "Operator." Every person who drives or is in actual physical control of a vehicle as herein defined;

((21)) (22) "Peace officer." Any officer authorized by law to execute criminal process or to make arrests for the violation of the statutes generally or of any particular statute or statutes relative to the highways of this state;

((22)) (23) "Pedestrian." Any person afoot;

((23)) (24) "Person." Every natural person, firm, copartnership, corporation, association, or organization;

((24)) (25) "Personal wireless service." Any federally licensed personal wireless service;

(26) "Personal wireless service facilities." Unstaffed facilities that are used for the transmission or reception, or both, of personal wireless services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures;

(27) "Pneumatic tires." Every tire of rubber or other resilient material designed to be inflated with compressed air to support the load thereon;

((25)) (28) "Private road or driveway." Every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

((26)) (29) "~~Highway.~~" ~~Every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;~~

(27)) (29) "Railroad." A carrier of persons or property upon vehicles, other than street cars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

((28)) (30) "Railroad sign or signal." Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train;

((29)) (31) "Residence district." The territory contiguous to and including the highway, as herein defined, not comprising a business district, as herein defined, when the property on such highway for a continuous distance of three

hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business;

~~((30))~~ (32) "Roadway." The paved, improved, or proper driving portion of a highway designed, or ordinarily used for vehicular travel;

~~((31))~~ (33) "Safety zone." The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise so as to be plainly discernible;

~~((32))~~ (34) "Sidewalk." That property between the curb lines or the lateral lines of a roadway, as herein defined, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

~~((33))~~ (35) "Solid tire." Every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load thereon;

~~((34))~~ (36) "State highway." Every highway as herein defined, or part thereof, which has been designated as a state highway, or branch thereof, by legislative enactment;

~~((35))~~ (37) "Street car." A vehicle other than a train, as herein defined, for the transporting of persons or property and operated upon stationary rails principally within incorporated cities and towns;

~~((36))~~ (38) "Traffic." Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highways for purposes of travel;

~~((37))~~ (39) "Traffic control signal." Any traffic device, as herein defined, whether manually, electrically, or mechanically operated, by which traffic alternately is directed to stop or proceed or otherwise controlled;

~~((38))~~ (40) "Traffic devices." All signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic;

~~((39))~~ (41) "Train." A vehicle propelled by steam, electricity, or other motive power with or without cars coupled thereto, operated upon stationary rails, except street cars;

~~((40))~~ (42) "Vehicle." Every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

Words and phrases used herein in the past, present, or future tense shall include the past, present, and future tenses; words and phrases used herein in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context thereof shall indicate to the contrary.

NEW SECTION. Sec. 3. A new section is added to chapter 47.44 RCW to read as follows:

This chapter does not apply to leases issued for the deployment of personal wireless service facilities as provided in section 5 of this act.

**Sec. 4. RCW 47.52.001 and 1961 c 13 s 47.52.001 are each amended to read as follows:*

(1) Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed.

(2) Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

(3) It is, therefore, the declared policy of this state to limit access to the highway facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities; except that the use of the rights of way of limited access facilities must be permitted for the deployment of personal wireless service facilities.

**Sec. 4 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 5. A new section is added to chapter 47.04 RCW to read as follows:

(1) For the purposes of this section:

(a) "Right of way" means all state-owned land within a state highway corridor.

(b) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, or person that owns, operates, or manages any personal wireless service facility. "Service provider" includes a service provider's contractors, subcontractors, and legal successors.

(2) The department shall establish a process for issuing a lease for the use of the right of way by a service provider and shall require that telecommunications equipment be co-located on the same structure whenever practicable. Consistent with federal highway administration approval, the lease must include the right of direct ingress and egress from the highway for construction and maintenance of the personal wireless service facility during nonpeak hours if public safety is not adversely affected. Direct ingress and egress may be allowed at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods. The lease may specify an indirect ingress and egress to the facility if it is reasonable and available for the particular location.

(3) The cost of the lease must be limited to the fair market value of the portion of the right of way being used by the service provider and the direct administrative expenses incurred by the department in processing the lease application.

If the department and the service provider are unable to agree on the cost of the lease, the service provider may submit the cost of the lease to binding arbitration by serving written notice on the department. Within thirty days of receiving the 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 panel shall determine the cost of the lease based on comparable siting agreements. 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.

(4) The department shall act on an application for a lease within sixty days of receiving a completed application, unless a service provider consents to a different time period.

(5) The reasons for a denial of a lease application must be supported by substantial evidence contained in a written record.

(6) The department may adopt rules to implement this section.

(7) All lease money paid to the department under this section shall be deposited in the motor vehicle fund created in RCW 46.68.070.

NEW SECTION. Sec. 6. The process for issuing leases required in section 5(2) of this act must be established by the effective date of this act.

NEW SECTION. Sec. 7. The department of transportation shall report to the legislature on the implementation of the lease process. The department must submit this report to the house technology, telecommunications and energy committee and the senate technology and communications committee. An implementation report shall be submitted by January 15, 2004, and a status report shall be submitted by January 15, 2005.

NEW SECTION. Sec. 8. Applications for wireless site leases pending on the effective date of this act must be treated as applications under section 5 of this act with the consent of the applicant.

Passed by the Senate April 22, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 12, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 12, 2003.

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

"I am returning herewith, without my approval as to sections 1 and 4, Engrossed Substitute Senate Bill No. 5977 entitled:

"AN ACT Relating to the use of state highway rights of way for the deployment of personal wireless service facilities;"

This bill establishes procedures for the Department of Transportation to permit siting of wireless telecommunications facilities within state highway rights of way. This is important legislation that will help expand telecommunications services in our state and promote economic development.

Section 4 of this bill would have amended RCW 47.52.001, which is a declaration of state policy to limit access to the highway facilities of the state in the interest of highway safety and for the preservation of the investment of the public in such facilities. The amendment would have created an exception to this longstanding policy by stating that the use of rights of way of limited access facilities "must be permitted" for the deployment of personal wireless facilities, apparently without qualification. Section 1 contains intent language that is largely the same as that contained in section 4. Because these sections can be read to suggest that deployment of personal wireless facilities is inconsistent with the state's interest in highway safety, and that telecommunications deployment should take precedence over it, I am compelled to veto them.

I agree with the Legislature that personal wireless service is a critical part of the state's infrastructure, and I believe that Department of Transportation policy should acknowledge this. However, state policy should also ensure that telecommunications deployment be achieved along state highways

without adversely affecting highway safety. For this reason, I believe the current language in RCW 47.52.001, which "limits" but by no means prohibits access to public highways, is the better statement of policy than those contained in sections 1 and 4 of this bill.

For these reasons, I have vetoed sections 1 and 4 of Engrossed Substitute Senate Bill No. 5977.

With the exception of sections 1 and 4, Engrossed Substitute Senate Bill No. 5977 is approved."

CHAPTER 245

[Second Substitute Senate Bill 5694]

INTEGRATED PERMIT SYSTEM

AN ACT Relating to an integrated permit system; creating new sections; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that environmental review and permitting, especially as applied to complex or controversial projects, can be characterized by multiple overlapping agency authorities, as a result of multiple governing statutes, generally adopted in isolation from one another, whose purposes and requirements may not be integrated and cause correspondingly uncoordinated implementation by administrative agencies. As a result, numerous and differing project descriptions, inconsistent administrative records, unproductive and redundant requirements, delays, and disproportionate costs caused by all of these may impede the making of sound and expeditious decisions by agencies and appropriate project changes by permit applicants, contrary to the intent and purpose of environmental review and permitting and the interests of permit applicants and the public.

A single project may be governed by local, state, federal, and tribal laws. A single project may be subject to all of the following requirements and others not listed here: (1) Federal section 404 permit, section 7 consultation, essential fish habitat consultation, section 401 water quality certification, section 402 waste discharge permit, section 402 general permit, section 4(f) parks and recreational lands use approval, superfund clean-up requirements, air quality conformity, underground storage tank removal, and coastal zone management program consistency certification; (2) state storm water pollution control plan approval, hydraulic project approval, aquatic lands use approval, historic and archaeological approval, archaeological excavation and removal permit, state model toxics control act clean-up requirements, asbestos removal, and air quality operating permit; and (3) local shoreline substantial development permit, conditional use permit or variance, shoreline design review, critical areas ordinance review, historic district approval, street use permit, demolition permit, grading permit, noise variance, storm water and drainage control approval, and utility approval.

The legislature finds that the public, as well as permit applicants, agencies, and affected parties, will benefit from an environmental review and permitting system that integrates and makes easily accessible the requirements and documentation for agency decision making, facilitating timely and effective participation in the process.

NEW SECTION. Sec. 2. The legislature intends to proceed in steps to develop and adopt an integrated permit system, working through the office of

permit assistance, in cooperation with the department of transportation, the transportation permit efficiency and accountability committee, and local, state, federal, and tribal regulatory agencies. When implemented, the integrated permit system would integrate project design, environmental review, permitting, and mitigation elements into a single process. Major components of the integrated permit system are a unified project decision support document and a unified project administrative procedure. A unified project decision support document is intended to be a single document proactively developed to support and satisfy all needs for information, analysis, and evaluation; document and justify incremental project decisions; inform the public and interested parties; and support integration of project design, environmental review, permitting, and mitigation elements. A unified project administrative procedure is intended to harmonize, reduce, or eliminate duplicative or conflicting procedural requirements for environmental analysis, agency decision making, and public review and comment. A unified project decision support document might be implemented by intergovernmental agreement under existing law. A unified project administrative procedure may require changes to existing law.

The integrated permit system, including the unified project decision support document and unified project administrative procedure, will not modify or change any agency's substantive regulatory authority including that agency's responsibility and authority to issue and condition its specific permit(s). The integrated permit system will promote procedural changes which lead to greater efficiency while maintaining environmental and community safeguards. In developing new approaches for public involvement, care shall be taken to maintain or enhance the quality of public involvement opportunities.

The legislature intends by this act to authorize, through a pilot project, development of a guidance document for implementation of a unified project decision support document and development of recommendations for an integrated permit system and for changes to existing law needed for implementation of a unified project administrative procedure.

NEW SECTION. Sec. 3. (1) By December 1, 2005, the office of permit assistance shall develop a guidance document for creating a unified project decision support document for state and federal agencies and local governments that will be sufficient to support all regulatory decision making.

The office shall, in consultation with the department of transportation and the transportation permit efficiency and accountability committee, test and, as necessary, revise and add to the "unified permit binder" currently being developed by the department of transportation to provide a standardized outline, checklists, and templates for preparation of a single master support document for all regulatory decision making concerning a project. The office shall address regulatory decision-making processes under existing substantive authorities and administrative procedures, applicable existing statutory requirements for environmental review and permitting, information necessary for decision making, and existing requirements for public and agency involvement and its documentation. The resulting document shall be designed to be a complete, concise, and logically organized guidance document for creating a unified project decision support document for state and federal agencies and local governments.

(2) By December 1, 2005, the office shall develop recommendations for an integrated permit system to integrate the procedural aspects of project design, environmental review, permitting, and mitigation; develop recommendations for legislative changes to statutory authorizations and administrative procedures needed to establish the system; and develop detailed recommendations for full-scale testing of the system through one or more pilot projects.

The elements of the integrated permit system shall include use of a unified project decision support document available on the internet for purposes of public review and comment and for decision making by agencies and local governments with jurisdiction over the project; a unified project administrative procedure for regulatory decision making that harmonizes, reduces or eliminates duplicative, or conflicting procedural requirements for environmental analysis, public review and comment.

(3) The office shall fulfill the requirements of subsections (1) and (2) of this section using a pilot project of economic development significance, after obtaining agreement to participate in the pilot project from the project proponent and the state agencies and local governments with jurisdiction. As needed, the office may also seek agreement to participate from federal and tribal agencies with jurisdiction.

(4) The office shall submit a report to the standing legislative committees with jurisdiction by December 1, 2003, and December 1, 2004, regarding progress on subsections (1) and (2) of this section and by December 1, 2005, upon completion of subsections (1) and (2) of this section.

NEW SECTION. Sec. 4. (1) A unified project administrative procedure is the common, integrated process used for the development of a project-specific unified project decision support document.

(2) A unified permit binder is the same as a unified project decision support document.

(3) A unified project decision support document is a single document that contains and integrates all project-specific application, design, environmental review, permitting and mitigation analyses and evaluations needed to support permitting and regulatory decisions.

NEW SECTION. Sec. 5. This act expires December 31, 2005.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2003, in the omnibus appropriations act, this act is null and void.

Passed by the Senate April 21, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 246

[Engrossed Substitute Senate Bill 5766]

ADMINISTRATIVE RULES—NOTICE

AN ACT Relating to providing businesses with notice of administrative rules; amending RCW 34.05.220 and 34.05.312; adding a new section to chapter 34.05 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that many businesses in the state are frustrated by the complexity of the regulatory system. The Washington Administrative Code containing agency rules now fills twelve volumes, and appears to be growing each year. While the vast majority of businesses make a good faith attempt to comply with applicable laws and rules, many find it extremely difficult to keep up with agencies' issuance of new rules and requirements. Therefore, state agencies are directed to make a good faith attempt to notify businesses affected by rule changes that may subject noncomplying businesses to penalties.

Sec. 2. RCW 34.05.220 and 1994 c 249 s 24 are each amended to read as follows:

(1) In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions. If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed.

(5) To the extent practicable, any rule proposed or adopted by an agency should be clearly and simply stated, so that it can be understood by those required to comply.

(6) The departments of employment security, labor and industries, ecology, and revenue shall develop and use a notification process to communicate information to the public regarding the postadoption notice required by section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 34.05 RCW to read as follows:

Either before or within two hundred days after the effective date of an adopted rule that imposes additional requirements on businesses the violation of which subjects the business to a penalty, assessment, or administrative sanction, an agency identified in RCW 34.05.220(6) shall notify businesses affected by the rule of the requirements of the rule and how to obtain technical assistance to comply. Notification must be provided by e-mail, if possible, to every person identified to receive the postadoption notice under RCW 34.05.220(6).

The notification must announce the rule change, briefly summarize the rule change, refer to appeal procedures under RCW 34.05.330, and include a contact for more information. Failure to notify a specific business under this section does not invalidate a rule or waive the requirement to comply with the rule. The requirements of this section do not apply to emergency rules adopted under RCW 34.05.350.

Sec. 4. RCW 34.05.312 and 1993 c 202 s 3 are each amended to read as follows:

Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible ~~((or))~~, proposed, or adopted rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency.

Passed by the Senate March 6, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 247

[House Bill 1954]

JUDGES PRO TEMPORE—COMPENSATION

AN ACT Relating to compensation of a retired justice or judge acting as a judge pro tempore; and amending RCW 2.08.180.

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

Sec. 1. RCW 2.08.180 and 2002 c 137 s 1 are each amended to read as follows:

A case in the superior court of any county may be tried by a judge pro tempore, who must be either: (1) A member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; or (2) pursuant to supreme court rule, any sitting elected judge. Any action in the trial of such cause shall have the same effect as if it was made by a judge of such court. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

A judge pro tempore shall, before entering upon his or her duties in any cause, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein is plaintiff and defendant, according to the best of my ability."

A judge pro tempore who is a practicing attorney and who is not a retired justice of the supreme court or judge of a superior court of the state of Washington, or who is not an active judge of a court of the state of Washington, shall receive a compensation of one-two hundred fiftieth of the annual salary of a superior court judge for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge. A judge who is an active judge of a court of the state of Washington shall receive no compensation as judge pro tempore. A justice or judge who has retired from the supreme court, court of appeals, or superior court of the state of Washington shall receive compensation as judge pro tempore in the amount of sixty percent of the amount payable to a judge pro tempore under this section, provided that a retired justice or judge may decline to accept compensation.

Passed by the House March 11, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 248

[House Bill 1083]

INSURANCE

AN ACT Relating to making clarifying, nonsubstantive amendments to and correcting outdated references in the insurance code; and amending RCW 48.01.050, 48.01.235, 48.14.029, 48.18.103, 48.18.291, 48.18A.050, 48.19.043, 48.20.025, 48.21.180, 48.22.110, 48.31.111, 48.31.184, 48.31.185, 48.43.115, 48.44.024, 48.46.068, 48.46.170, 48.46.225, 48.46.350, 48.62.111, 48.90.010, 48.90.020, 48.90.030, 48.90.140, and 48.99.040.

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

Sec. 1. RCW 48.01.050 and 1990 c 130 s 1 are each amended to read as follows:

"Insurer" as used in this code includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals(~~(, as defined in RCW 70.39.020(3), which)~~) that join and organize as a mutual corporation pursuant to chapter 24.06 RCW for the purpose of insuring or self-insuring against liability claims, including medical liability, through a contributing trust fund (~~(shall not be deemed)~~) are not an "insurer" under this code. Two or more local governmental entities, (~~(as defined in RCW 48.62.020, which pursuant to RCW 48.62.040, 48.62.035, or any other)~~) under any provision of law, that join together and organize to form an organization for the purpose of jointly self-insuring or self-funding (~~(shall not be deemed)~~) are not an "insurer" under this code. Two or more persons engaged in the business of commercial fishing who enter into an arrangement with other such persons for

the pooling of funds to pay claims or losses arising out of loss or damage to a vessel or machinery used in the business of commercial fishing and owned by a member of the pool (~~shall not be deemed~~) are not an "insurer" under this code.

Sec. 2. RCW 48.01.235 and 1995 c 34 s 3 are each amended to read as follows:

(1) An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not deny enrollment of a child under the health plan of the child's parent on the grounds that:

- (a) The child was born out of wedlock;
- (b) The child is not claimed as a dependent on the parent's federal tax return;

or

(c) The child does not reside with the parent or in the issuer's, or insured or self funded employee welfare benefit plan's service area.

(2) Where a child has health coverage through an issuer, or an insured or self funded employee welfare benefit plan of a noncustodial parent(~~(+)~~), the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(b) Permit the provider or the custodial parent to submit claims for covered services without the approval of the noncustodial parent. If the provider submits the claim, the provider will obtain the custodial parent's assignment of insurance benefits or otherwise secure the custodial parent's approval.

For purposes of this subsection the department of social and health services as the state medicaid agency under RCW 74.09.500 may reassign medical insurance rights to the provider for custodial parents whose children are eligible for services under RCW 74.09.500; and

(c) Make payments on claims submitted in accordance with (b) of this subsection directly to the custodial parent, to the provider, or to the department of social and health services as the state medicaid agency under RCW 74.09.500.

(3) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(4) Where a parent is required by a court order to provide health coverage for a child, and the parent is eligible for family health coverage, the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) Enroll the child under family coverage upon application of the child's other parent, department of social and health services as the state medicaid agency under RCW 74.09.500, or child support enforcement program (~~as defined under RCW 26.18.170~~), if the parent is enrolled but fails to make application to obtain coverage for such child; and

(c) Not disenroll, or eliminate coverage of, such child who is otherwise eligible for the coverage unless the issuer or insured or self funded employee welfare benefit plan is provided satisfactory written evidence that:

(i) The court order is no longer in effect; or
(ii) The child is or will be enrolled in comparable health coverage through another issuer, or insured or self funded employee welfare benefit plan, which will take effect not later than the effective date of disenrollment.

(5) An issuer, or insured or self funded employee welfare benefit plan, that has been assigned the rights of an individual eligible for medical assistance under medicaid and coverage for health benefits from the issuer, or insured or self funded employee welfare benefit plan, may not impose requirements on the department of social and health services that are different from requirements applicable to an agent or assignee of any other individual so covered.

Sec. 3. RCW 48.14.029 and 1998 c 313 s 3 are each amended to read as follows:

(1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under RCW 48.14.020. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international insurance services as defined in this section. In order to receive the credit, the international insurance services activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after July 1, 1998, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on July 1, 1998. Credit is authorized for new employees hired for new positions created after July 1, 1998. 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.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW ((43.63A.700)) 43.31C.020; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW ((43.63A.710)) 43.31C.030 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international insurance services;

(c) "International insurance services" means a business that provides insurance services related directly to the delivery of the service outside the United States or on behalf of persons residing outside the United States; and

(d) "Qualified employment position" means a permanent full-time position to provide international insurance services. 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.

(4) By ordinance, the legislative authority of a city with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW ((43.63A.700)) 43.31C.020, may designate a contiguous group of census tracts within the city as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW ((43.63A.710)) 43.31C.030. Upon making the designation, the city shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(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:

(a) Employment records for the previous six years;

(b) Information relating to description of international insurance services activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international insurance services activity engaged in at that location by the person.

(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 used shall be 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.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section.

Sec. 4. RCW 48.18.103 and 1997 c 428 s 1 are each amended to read as follows:

(1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms. All commercial property casualty forms shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a policy form under subsection (3) of this section, the insurer shall amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, ((or)) occupation, nonprofit

organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof shall be on the commissioner.

Sec. 5. RCW 48.18.291 and 1985 c 264 s 18 are each amended to read as follows:

(1) ~~((No))~~ A contract of insurance predicated wholly or in part upon the use of a private passenger automobile ~~((shall))~~ may not be terminated by cancellation by the insurer until at least twenty days after mailing written notice of cancellation to the named insured at the latest address filed with the insurer by or on behalf of the named insured, accompanied by the reason therefor ~~((: PROVIDED, That where))~~. If cancellation is for nonpayment of premium, or is within the first thirty days after the contract has been in effect, at least ten days notice of cancellation, accompanied by the reason therefor, shall be given ~~((: PROVIDED HOWEVER, That))~~. In case of a contract evidenced by a written binder which has been delivered to the insured, if ~~((such))~~ the binder contains a clearly stated expiration date, no additional notice of cancellation or nonrenewal ~~((shall be))~~ is required.

(2)(a) ~~((No))~~ A notice of cancellation by the insurer as to a contract of insurance to which subsection (1) of this section applies ~~((shall be))~~ is not valid if sent more than sixty days after the contract has been in effect unless:

(i) The named insured fails to discharge when due any of his or her obligations in connection with the payment of premium for the policy or any installment thereof, whether payable directly to the insurer or to its agent or indirectly under any premium finance plan or extension of credit ~~((:))~~; or

(ii) The driver's license of the named insured, or of any other operator who customarily operates an automobile insured under the policy, has been ~~((under suspension or revocation))~~ suspended, revoked, or cancelled during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding the effective date of the renewal policy.

(b) Modification by the insurer of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars ~~((shall not be deemed))~~ is not a cancellation of the coverage or of the policy.

(3) The substance of subsections (1) and (2)(a) of this section must be set forth in each contract of insurance subject to the provisions of subsection (1) ~~((above))~~ of this section, and may be in the form of an attached endorsement.

(4) ~~((No))~~ A notice of cancellation of a policy ~~((which can))~~ that may be canceled only pursuant to subsection (2) ~~((shall be))~~ of this section is not effective unless the reason therefor accompanies or is included in the notice of cancellation.

Sec. 6. RCW 48.18A.050 and 1983 c 3 s 150 are each amended to read as follows:

The provisions of RCW 48.23.020, 48.23.030, 48.23.080 through 48.23.120, 48.23.140, 48.23.150, 48.23.200 through 48.23.240, 48.23.310, ~~((48.23.350,))~~ and 48.23.360, and the provisions of chapters 48.24 and 48.76

RCW ~~((shall be))~~ are inapplicable to variable contracts~~((; nor shall))~~. Any provision in the code requiring contracts to be participating ~~((be deemed))~~ is not applicable to variable contracts. Except as otherwise provided in this chapter, all pertinent provisions of the insurance code ~~((shall))~~ apply to separate accounts and contracts relating thereto. Any individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state ~~((shall))~~ must contain grace, reinstatement, and nonforfeiture provisions appropriate to ~~((such))~~ those contracts, and any ~~((such))~~ variable life insurance contract ~~((shall))~~ must provide that the investment experience of the separate account ~~((shall in no event))~~ may not operate to reduce the death benefit below an amount equal to the face amount of the contract at the time the contract was issued. Any individual variable life insurance contract may contain a provision for deduction from the death proceeds of amounts of due and unpaid premiums or of indebtedness which are appropriate to ~~((such))~~ that contract~~((s))~~. The reserve liability for variable annuities ~~((shall))~~ must be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Sec. 7. RCW 48.19.043 and 1997 c 428 s 2 are each amended to read as follows:

(1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for rates.

(2) Notwithstanding the provisions of RCW 48.19.040(1), commercial property casualty policies may be issued prior to filing the rates. All commercial property casualty rates shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty rate has been filed, the commissioner finds that the rate does not meet the requirements of this chapter, the commissioner shall disapprove the filing and give notice to the insurer or rating organization that made the filing, specifying how the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a rate filing under subsection (3) of this section, the insurer shall issue an endorsement changing the rate to comply with the commissioner's disapproval from the date the rate is no longer effective.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, ~~((or))~~ occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof ~~((shall be))~~ is on the commissioner.

Sec. 8. RCW 48.20.025 and 2001 c 196 s 1 are each amended 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 issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and 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 received by 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 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 insurer's individual health benefit plans under RCW ((48.14.020+)) 48.14.020.

Sec. 9. RCW 48.21.180 and 1990 1st ex.s. c 3 s 7 are each amended to read as follows:

Each group disability insurance contract which is delivered or issued for delivery or renewed, on or after January 1, 1988, and which insures for hospital or medical care ~~((shall))~~ must contain provisions providing benefits for the treatment of chemical dependency rendered to the insured by a provider which is an "approved treatment ~~((facility or))~~ program" under RCW 70.96A.020(3).

Sec. 10. RCW 48.22.110 and 1994 c 186 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 48.22.115 through 48.22.135.

(1) "Borrower" means a person who receives a loan or enters into a retail installment contract under chapter 63.14 RCW to purchase a motor vehicle or vessel in which the secured party holds an interest.

(2) "Motor vehicle" means a motor vehicle in this state subject to registration under chapter 46.16 RCW, except motor vehicles governed by RCW

46.16.020 or registered with the Washington utilities and transportation commission as common or contract carriers.

(3) "Secured party" means a person, corporation, association, partnership, or venture that possesses a bona fide security interest in a motor vehicle or vessel.

(4) "Vendor single-interest" or "collateral protection coverage" means insurance coverage insuring primarily or solely the interest of a secured party but which may include the interest of the borrower in a motor vehicle or vessel serving as collateral and obtained by the secured party or its agent after the borrower has failed to obtain or maintain insurance coverage required by the financing agreement for the motor vehicle or vessel. Vendor single-interest or collateral protection coverage does not include insurance coverage purchased by a secured party for which the borrower is not charged.

(5) "Vessel" means a vessel as defined in RCW 88.02.010 and includes personal watercraft as defined in RCW ~~((88.12.010))~~ 79A.60.010.

Sec. 11. RCW 48.31.111 and 1993 c 462 s 59 are each amended to read as follows:

(1) ~~((Except as provided in RCW 48.32A.060, no))~~ A delinquency proceeding may not be commenced under this chapter by anyone other than the commissioner of this state, and no court has jurisdiction to entertain a proceeding commenced by another person.

(2) No court of this state has jurisdiction to entertain a complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to the proceedings, other than in accordance with this chapter.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served under the rules of civil procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is an agent, broker, or other person who has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer; ~~((or))~~

(b) If the person served is a reinsurer who has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in an action on or incident to the reinsurance contract; ~~((or))~~

(c) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer; ~~((or))~~

(d) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in an action concerning the assets; or

(e) If the person served is obligated to the insurer in any way, in an action on or incident to the obligation.

(4) If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

Sec. 12. RCW 48.31.184 and 1993 c 462 s 74 are each amended to read as follows:

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, then the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under RCW 48.31.280~~((7))~~ (8).

Sec. 13. RCW 48.31.185 and 1975-76 2nd ex.s. c 109 s 10 are each amended to read as follows:

(1) Within one hundred twenty days of a final determination of insolvency of an insurer and order of liquidation by a court of competent jurisdiction of this state, the receiver shall make application to the court for approval of a proposal to disperse assets out of ~~((such))~~ that insurer's marshalled assets from time to time as ~~((such))~~ assets become available to the Washington insurance guaranty association and the Washington life and disability insurance guaranty association and to any entity or person performing a similar function in another state. ~~((f))~~ For purposes of this section, "associations" means the Washington insurance guaranty association and the Washington life and disability insurance guaranty association and any entity or person performing a similar function in other states ~~((shall in this section be referred to collectively as the "associations"-))~~.

(2) Such a proposal ~~((shall))~~ must at least include provisions for:

(a) Reserving amounts for the payment of claims falling within the priorities established in RCW 48.31.280 ~~((2)(a), (b), and (c) as now or hereafter amended))~~;

(b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

(c) Equitable allocation of disbursements to each of the associations entitled thereto;

(d) The securing by the receiver from each of the associations entitled to disbursements pursuant to this section an agreement to return to the receiver ~~((such))~~ assets previously disbursed ~~((as may be))~~ that are required to pay claims of secured creditors and claims falling within the priorities established in RCW 48.31.280 ~~((as now or hereafter amended in accordance with such priorities))~~. ~~((No))~~ A bond ~~((shall be))~~ is not required of any ~~((such))~~ association; and

(e) A full report ~~((to be made))~~ by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on ~~((such))~~ those assets, and any other matters as the court may direct.

(3) The receiver's proposal ~~((shall))~~ must provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver, and ~~((shall))~~ must further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of ~~((such))~~

~~the~~ claim payments made or to be made by the associations then disbursements ~~((shall))~~ must be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life insurance, disability insurance, or annuities, provide for disbursements of assets to the Washington life and disability insurance guaranty association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of the Washington life and disability insurance guaranty association act.

(5) Notice of ~~((such))~~ an application ~~((shall))~~ must be given to the associations in and to the commissioners of insurance of each of the states. ~~((Any such))~~ Notice ~~((shall be deemed to have been given))~~ is effected when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of ~~((such))~~ the application to the court.

Sec. 14. RCW 48.43.115 and 1996 c 281 s 1 are each amended to read as follows:

(1) The legislature recognizes the role of health care providers as the appropriate authority to determine and establish the delivery of quality health care services to maternity patients and their newly born children. It is the intent of the legislature to recognize patient preference and the clinical sovereignty of providers as they make determinations regarding services provided and the length of time individual patients may need to remain in a health care facility after giving birth. It is not the intent of the legislature to diminish a carrier's ability to utilize managed care strategies but to ensure the clinical judgment of the provider is not undermined by restrictive carrier contracts or utilization review criteria that fail to recognize individual postpartum needs.

(2) Unless otherwise specifically provided, the following definitions apply throughout this section:

(a) "Attending provider" means a provider who: Has clinical hospital privileges consistent with RCW 70.43.020; is included in a provider network of the carrier that is providing coverage; and is a physician licensed under chapter 18.57 or 18.71 RCW, a certified nurse midwife licensed under chapter 18.79 RCW, a midwife licensed under chapter 18.50 RCW, a physician's assistant licensed under chapter 18.57A or 18.71A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(b) "Health carrier" or "carrier" means 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 this chapter.

(3)(a) Every health carrier that provides coverage for maternity services must permit the attending provider, in consultation with the mother, to make decisions on the length of inpatient stay, rather than making such decisions through contracts or agreements between providers, hospitals, and insurers. These decisions must be based on accepted medical practice.

(b) Covered eligible services may not be denied for inpatient, postdelivery care to a mother and her newly born child after a vaginal delivery or a cesarean section delivery for such care as ordered by the attending provider in consultation with the mother.

(c) At the time of discharge, determination of the type and location of follow-up care (~~(including in-person care,)~~) must be made by the attending provider in consultation with the mother rather than by contract or agreement between the hospital and the insurer. These decisions must be based on accepted medical practice.

(d) Covered eligible services may not be denied for follow-up care, including in-person care, as ordered by the attending provider in consultation with the mother. Coverage for providers of followup services must include, but need not be limited to, attending providers as defined in this section, home health agencies licensed under chapter 70.127 RCW, and registered nurses licensed under chapter 18.79 RCW.

(e) ~~((Nothing in))~~ This section ~~((shall be construed to))~~ does not require attending providers to authorize care they believe to be medically unnecessary.

(f) Coverage for the newly born child must be no less than the coverage of the child's mother for no less than three weeks, even if there are separate hospital admissions.

(4) ~~((No))~~ A carrier that provides coverage for maternity services may not deselect, terminate the services of, require additional documentation from, require additional utilization review of, reduce payments to, or otherwise provide financial disincentives to any attending provider or health care facility solely as a result of the attending provider or health care facility ordering care consistent with ~~((the provisions of))~~ this section. ~~((Nothing in))~~ This section ~~((shall be construed to))~~ does not prevent any insurer from reimbursing an attending provider or health care facility on a capitated, case rate, or other financial incentive basis.

(5) Every carrier that provides coverage for maternity services must provide notice to policyholders regarding the coverage required under this section. The notice must be in writing and must be transmitted at the earliest of the next mailing to the policyholder, the yearly summary of benefits sent to the policyholder, or January 1 of the year following June 6, 1996.

(6) This section ~~((is not intended to))~~ does not establish a standard of medical care.

(7) This section ~~((shall apply))~~ applies to coverage for maternity services under a contract issued or renewed by a health carrier after June 6, 1996, and ~~((shall apply))~~ applies to plans operating under the health care authority under chapter 41.05 RCW beginning January 1, 1998.

Sec. 15. RCW 48.44.024 and 1995 c 265 s 23 are each amended to read as follows:

(1) ~~((No))~~ A health care service contractor ~~((shall))~~ may not offer any health benefit plan to any small employer without complying with ~~((the provisions of))~~ RCW 48.44.023~~((5))~~ (3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care ~~((shall not be considered))~~ are not small employers and ~~((such plans shall not be subject to the provisions of RCW 48.44.023(5)))~~ the plans are not subject to RCW 48.44.023(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005.

Sec. 16. RCW 48.46.068 and 1995 c 265 s 24 are each amended to read as follows:

(1) ~~((No))~~ A health maintenance organization ~~((shall))~~ may not offer any health benefit plan to any small employer without complying with ~~((the provisions of))~~ RCW 48.46.066~~((5))~~ (3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care ~~((shall not be considered))~~ are not small employers and ~~((such plans shall not be subject to the provisions of RCW 48.46.066(5)))~~ are not subject to RCW 48.46.066(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005.

Sec. 17. RCW 48.46.170 and 1996 c 178 s 13 are each amended to read as follows:

(1) Solicitation of enrolled participants by a health maintenance organization granted a certificate of registration, or its agents or representatives, ~~((shall not be construed to))~~ does not violate any provision of law relating to solicitation or advertising by health professionals.

(2) Any health maintenance organization authorized under this chapter ~~((shall not be deemed to be))~~ is not violating any law prohibiting the practice by unlicensed persons of podiatric medicine and surgery, chiropractic, dental hygiene, opticianry, dentistry, optometry, osteopathic medicine and surgery, pharmacy, medicine and surgery, physical therapy, nursing, or psychology~~((= PROVIDED, That))~~. This subsection ~~((shall not be construed to))~~ does not expand a health professional's scope of practice or ~~((to))~~ allow employees of a health maintenance organization to practice as a health professional unless licensed.

(3) ~~((Nothing contained in))~~ This chapter ~~((shall))~~ does not alter any statutory obligation, or rule adopted thereunder, in chapter 70.38 ~~((or 70.39))~~ RCW.

(4) Any health maintenance organization receiving a certificate of registration pursuant to this chapter ~~((shall be))~~ is exempt from ~~((the provisions of))~~ chapter 48.05 RCW~~((, but shall be subject to chapter 70.39 RCW))~~.

Sec. 18. RCW 48.46.225 and 1990 c 119 s 4 are each amended to read as follows:

(1) Any rehabilitation, liquidation, or conservation of a health maintenance organization ~~((shall be deemed to be))~~ is the same as the rehabilitation, liquidation, or conservation of an insurance company and ~~((shall))~~ must be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in RCW 48.31.030, 48.31.050, and 48.31.080. Enrolled participants ~~((shall))~~ have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) For purposes of determining the priority of distribution of general assets, claims of enrolled participants and enrolled participants' beneficiaries ~~((shall))~~

have the same priority as established by RCW 48.31.280 for policyholders and beneficiaries of insureds of insurance companies. If an enrolled participant is liable to any provider for services provided pursuant to and covered by the health maintenance agreement, that liability (~~((shall have))~~) has the status of an enrolled participant claim for distribution of general assets.

(3) A provider who is obligated by statute or agreement to hold enrolled participants harmless from liability for services provided pursuant to and covered by a health care plan (~~((shall have))~~) has a priority of distribution of the general assets immediately following that of enrolled participants and enrolled participants' beneficiaries (~~((as described herein, and immediately preceding the priority of distribution described in RCW 48.31.280(2)(e))~~) under this section.

Sec. 19. RCW 48.46.350 and 1990 1st ex.s. c 3 s 14 are each amended to read as follows:

Each group agreement for health care services that is delivered or issued for delivery or renewed on or after January 1, 1988, (~~((shall))~~) must contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider which is an "approved treatment (~~((facility or))~~) program" under RCW 70.96A.020(3)(~~(- PROVIDED, That)~~). However, this section does not apply to any agreement written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged (~~((s))~~), which is commonly referred to as Medicare, Parts A&B(~~((s))~~), and amendments thereto. Treatment (~~((shall))~~) must be covered under the chemical dependency coverage if treatment is rendered by the health maintenance organization or if the health maintenance organization refers the enrolled participant or the enrolled participant's dependents to a physician licensed under chapter 18.57 or 18.71 RCW, or to a qualified counselor employed by an approved treatment (~~((facility or))~~) program described in RCW 70.96A.020(3). In all cases, a health maintenance organization (~~((shall))~~) retains the right to diagnose the presence of chemical dependency and select the modality of treatment that best serves the interest of the health maintenance organization's enrolled participant, or the enrolled participant's covered dependent.

Sec. 20. RCW 48.62.111 and 1991 sp.s. c 30 s 11 are each amended to read as follows:

(1) The assets of a joint self-insurance program governed by this chapter may be invested only in accordance with the general investment authority that participating local government entities possess as a governmental entity.

(2) Except as provided in subsection (3) of this section, a joint self-insurance program may invest all or a portion of its assets by depositing the assets with the treasurer of a county within whose territorial limits any of its member local government entities lie, to be invested by the treasurer for the joint program.

(3) Local government members of a joint self-insurance program may by resolution of the program designate some other person having experience in financial or fiscal matters as treasurer of the program, if that designated treasurer is located in Washington state. The program shall, unless the program's treasurer is a county treasurer, require a bond obtained from a surety company authorized to do business in Washington in an amount and under the terms and conditions

that the program funds will protect against loss arising from mismanagement or malfeasance in investing and managing program funds. The program may pay the premium on the bond.

All program funds must be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the treasurer or a person appointed by the program and upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW. The treasurer shall establish a program account, into which shall be recorded all program funds, and the treasurer shall maintain ~~((such))~~ special accounts as may be created by the program into which the treasurer shall record all money as the program may direct by resolution.

(4) The treasurer of the joint program shall deposit all program funds in a ~~((qualified))~~ public depository or depositories as defined in RCW 39.58.010(2) and under the same restrictions, contracts, and security as provided for any participating local government entity, and ~~((such))~~ the depository shall be designated by resolution of the program.

(5) A joint self-insurance program may invest all or a portion of its assets by depositing the assets with the state investment board, to be invested by the state investment board in accordance with chapter 43.33A RCW. The state investment board shall designate a manager for those funds to whom the program may direct requests for disbursement upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW.

(6) All interest and earnings collected on joint program funds belong to the program and must be deposited to the program's credit in the proper program account.

(7) A joint program may require a reasonable bond from any person handling money or securities of the program and may pay the premium for the bond.

(8) Subsections (3) and (4) of this section do not apply to a multistate joint self-insurance program governed by RCW 48.62.081.

Sec. 21. RCW 48.90.010 and 1986 c 142 s 1 are each amended to read as follows:

(1) Day care providers are facing a major crisis in that adequate and affordable business liability insurance is no longer available within this state for persons who care for children. Many child day care centers have been forced to purchase inadequate coverage at prohibitive premium rates from unregulated foreign surplus line carriers over which the state has minimal control.

(2) There is a danger that a substantial number of child day care centers who cannot afford the escalating premiums will be unable or unwilling to remain in business without adequate coverage. As a result the number of available facilities will be drastically reduced forcing some parents to leave the work force to care for their children. A corresponding demand upon the state's resources will result in the form of public assistance to unemployed parents and day care providers.

(3) There is a further danger that a substantial number of child day care centers now licensed pursuant to state law, who currently provide specific safeguards for the health and safety of children but are unable to procure insurance, may choose to continue to operate without state approval, avoiding

regulation and payment of legitimate taxes, and forcing some parents to place their children in facilities of unknown quality and questionable levels of safety.

(4) Most child day care centers are small business enterprises with limited resources. The state's policies encourage the growth and development of small businesses.

(5)(a) This chapter is intended to remedy the problem of nonexistent or unaffordable liability coverage for child day care centers, and to encourage compliance with state laws protecting children while meeting the state's sound economic policies of encouraging small business development, sustaining an active work force, and discouraging policies that result in an increased drain on the state's resources through public assistance and other forms of public funding.

(b) This chapter will empower child day care centers to create self-insurance pools, to purchase insurance coverage, and to contract for risk management and administrative services through an association with demonstrated responsible fiscal management.

((6)) The intent of this legislation is to allow ((such)) these associations maximum flexibility to create and administer plans to provide coverage and risk management services to licensed child day care centers.

Sec. 22. RCW 48.90.020 and 1986 c 142 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Child day care center" means an agency that regularly provides care for one or more children for periods of less than twenty-four hours as defined in RCW 74.15.020((3)(d)) (1)(a).

(2) "Association" means a corporation organized under Title 24 RCW, representative of one or more categories of child day care centers not formed for the sole purpose of establishing and operating a self-insurance program that:

(a) Maintains a roster of current names and addresses of member child day care centers and of former member child day care centers or their representatives, and of all employees of member or former member child day care centers;

(b) Has a membership of a size and stability to ensure that it will be able to provide consistent and responsible fiscal management; and

(c) Maintains a regular newsletter or other periodic communication to member child day care centers.

(3) "Subscriber" means a child day care center that:

(a) Subscribes to a plan created pursuant to this chapter;

(b) Complies with all state licensing requirements;

(c) Is a member in good standing of an association;

(d) Has consistently maintained its license free from revocation for cause, except where the revocation was not later rescinded or vacated by appellate or administrative decision; and

(e) Is prepared to demonstrate the willingness and ability to bear its share of the financial responsibility of its participation in the plan for each applicable contractual period.

Sec. 23. RCW 48.90.030 and 1986 c 142 s 3 are each amended to read as follows:

Associations meeting the criteria of RCW 48.90.020 are empowered to create and operate self-insurance plans to provide general liability coverage to member child day care centers who choose to subscribe to the plans.

Sec. 24. RCW 48.90.140 and 1986 c 142 s 14 are each amended to read as follows:

(1) If at any time the plan can no longer be operated on a sound financial basis, the association may elect to dissolve the plan, subject to explicit approval by the commissioner of a plan for dissolution. Once a plan operated by an association has been dissolved, that association may not again implement a plan pursuant to this chapter for five calendar years.

(2) At dissolution, the assets of the association represented by the contributing trust fund shall be deposited with the commissioner (~~((for))~~) for a period of twenty-one years, to be made available for claims arising during that period based upon occurrences during the term of coverage. At the time of transfer of the funds, the association shall certify to the commissioner a list of all current subscribers, with their correct mailing addresses, and shall have notified all current subscribers of their obligation to keep the commissioner informed of any changes in their mailing addresses over the twenty-one year period, and that this obligation extends to their representatives, successors, assigns, and to the representatives of their estates. Upon dissolution, the association (~~((shall be))~~) is required to provide to the commissioner a list of all plan subscribers during all of the years of operation of the plan.

At the end of the twenty-one year period, any funds remaining in the trust account (~~((shall))~~) must be distributed to those subscribers who were current subscribers in the most recent year of operation of the plan, with each current subscriber receiving an equal share of the distribution, without regard for the length of time each child day care center was a subscriber.

In the alternative, in the discretion of the association, the balance of the contributing trust fund may be used to purchase similar or more liberal coverage from a commercial insurer. Each subscriber shall, however, be given the option to deposit its share of the fund with the commissioner as provided in this section if it elects not to participate in the proposed commercial insurance.

Sec. 25. RCW 48.99.040 and 1947 c 79 s .31.14 are each amended to read as follows:

(1) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All (~~((such))~~) claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either (a) be proved in this state as provided by law, or (b)(~~((:))~~) if ancillary proceedings have been commenced in (~~((such))~~) reciprocal states, (~~((may))~~) be proved in those proceedings. In the event a claimant elects to prove (~~((his))~~) a claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in RCW (~~((48.31.150))~~) 48.99.050 with respect to ancillary proceedings in this state, the final allowance of (~~((such))~~) a claim by the courts in the ancillary state (~~((shall))~~) must be accepted in this state as conclusive as to its amount, and (~~((shall))~~) must

also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

Passed by the House February 12, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 249

[House Bill 1654]

DOMESTIC MUTUAL INSURERS

AN ACT Relating to borrowing money by domestic mutual insurers; and amending RCW 48.09.320.

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

Sec. 1. RCW 48.09.320 and 1947 c 79 s .09.32 are each amended to read as follows:

(1) A domestic mutual insurer (~~((on the cash premium plan))~~) may, with the commissioner's advance approval and without the pledge of any of its assets, borrow money to defray the expenses of its organization or for any purpose required by its business, upon an agreement that such money and such fair and reasonable interest thereon as may be agreed upon, (~~((but not exceeding six percent per annum.))~~) shall be repaid only out of the insurer's earned surplus in excess of its required minimum surplus.

(2) (~~((Any money so borrowed shall not form a part of the insurer's legal liabilities or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with interest thereon accrued but unpaid.))~~) An insurer borrowing funds under this section must comply with the national association of insurance commissioner's - accounting practices and procedures manual which sets forth requirements for borrowed money to be treated as surplus notes for financial accounting purposes.

(3) The commissioner's approval of such (~~((loan))~~) borrowed funds, if granted, shall specify the amount to be borrowed, the purpose for which the money is to be used, the terms and form of the loan agreement, the date by which the loan must be completed, fair and reasonable commissions or promotional expenses to be incurred or to be paid, and such other related matters as the commissioner shall deem proper. If the money is to be borrowed upon multiple agreements, the agreements shall be serially numbered. No loan agreement or series thereof shall have or be given any preferential rights over any other such loan agreement or series. (~~((No commission or promotional expense shall be incurred or be paid on account of any such loan.))~~)

Passed by the House March 11, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 250

[Substitute Senate Bill 5641]

UNLAWFUL TRANSACTION OF INSURANCE

AN ACT Relating to civil and criminal penalties for the unlawful transaction of insurance or health coverage; amending RCW 48.01.080, 48.15.020, 48.17.060, 48.44.015, 48.44.060, 48.46.027, and 48.46.420; reenacting and amending RCW 9.94A.515 and 9.94A.515; adding a new section to chapter 48.15 RCW; adding new sections to chapter 48.17 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 48.01.080 and 1947 c 79 s .01.08 are each amended to read as follows:

~~(Violation of)~~ Except as otherwise provided in this code, any person violating any provision of this code is ~~(punishable by a fine of)~~ guilty of a gross misdemeanor and will, upon conviction, be fined not less than ten dollars nor more than one thousand dollars, or ~~(by imprisonment)~~ imprisoned for not more than one year, or both ~~(fine and imprisonment)~~, in addition to any other penalty or forfeiture provided herein or otherwise by law.

Sec. 2. RCW 48.15.020 and 1992 c 149 s 1 are each amended to read as follows:

(1) An insurer ~~((not thereunto))~~ that is not authorized by the commissioner ~~((shall))~~ may not solicit insurance business in this state ~~((, nor))~~ or transact insurance business in this state, except as provided in this chapter.

(2)(a) ~~((No))~~ A person ~~((shall))~~ may not, in this state, represent an unauthorized insurer except as provided in this chapter. This ~~((provision shall))~~ subsection does not apply to any adjuster or attorney at law representing ~~((such))~~ an unauthorized insurer from time to time in this state in his or her professional capacity.

(b) A person, other than a duly licensed surplus line broker acting in good faith under his or her license, who makes a contract of insurance in this state, directly or indirectly, on behalf of an unauthorized insurer, without complying with the provisions of this chapter, is personally liable for the performance of such contract.

(3) Each violation of subsection (2) of this section ~~((shall))~~ constitutes a separate offense punishable by a fine of not more than twenty-five thousand dollars, and the commissioner, at the commissioner's discretion, may order replacement of policies improperly placed with an unauthorized insurer with policies issued by an authorized insurer. Violations may result in suspension or revocation of a license.

NEW SECTION. Sec. 3. A new section is added to chapter 48.15 RCW to read as follows:

(1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract.

(3) Any person who knowingly violates RCW 48.15.020(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.15.020(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund.

Sec. 4. RCW 48.17.060 and 1995 c 214 s 1 are each amended to read as follows:

(1) ~~((No))~~ A person ~~((shall in this state))~~ may not act as or hold himself or herself out to be an agent, broker, solicitor, or adjuster in this state unless ~~((then))~~ licensed ~~((therefor by this state))~~ by the commissioner.

(2) ~~((No))~~ An agent, solicitor, or broker ~~((shall))~~ may not solicit or take applications for, procure, or place for others any kind of insurance for which he or she is not then licensed.

(3) This section ~~((shall))~~ does not apply with respect to any person securing and forwarding information required for the purposes of group credit life and credit disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations in connection with an extension of credit and such other credit life and disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information. However, the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance ~~((shall))~~ will not be considered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve months, not to exceed three dollars per loan transaction revision per year.

~~((4) Any person violating this section shall be liable to a fine of not to exceed five hundred dollars and imprisonment for not to exceed six months for each instance of such violation.))~~

NEW SECTION. Sec. 5. A new section is added to chapter 48.17 RCW to read as follows:

(1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract, health care services contract, or health maintenance agreement.

(3) Any person who knowingly violates RCW 48.17.060(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any person who knowingly violates RCW 48.17.060(2) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(5) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(6)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.17.060 (1) or (2), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080;

(ii) Suspend or revoke a license; and/or

(iii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund.

NEW SECTION. Sec. 6. A new section is added to chapter 48.17 RCW to read as follows:

Any solicitor, agent, or broker soliciting, negotiating, or procuring an application for insurance or health care services in this state must make a good faith effort to determine whether the entity that is issuing the coverage is:

(1) Authorized to transact insurance or health coverage in this state; or

(2) Conducting business through a surplus lines broker licensed under chapter 48.15 RCW.

Sec. 7. RCW 48.44.015 and 1983 c 202 s 2 are each amended to read as follows:

(1) ~~((No))~~ A person ~~((shall))~~ **may not** in this state, by mail or otherwise, act as or hold himself or herself out to be a health care service contractor, as defined in RCW 48.44.010 without first being ~~((duly))~~ registered ~~((therefor))~~ with the commissioner.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health care service contractor domiciled in this state other than the memberships and bonds of a nonprofit corporation shall be subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health care service contractors were domestic insurers.

(3) Any person violating any provision of subsection ~~((1) or))~~ (2) of this section ~~((shall be liable to a fine of not to exceed))~~ is guilty of a gross misdemeanor and will, upon conviction, be fined not more than one thousand dollars ~~((and imprisonment for not to exceed))~~ or imprisoned for not more than six months, or both, for each ~~((instance of such))~~ violation.

NEW SECTION. Sec. 8. A new section is added to chapter 48.44 RCW to read as follows:

(1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves a health care services contract.

(3) Any person who knowingly violates RCW 48.44.015(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.44.015(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund.

Sec. 9. RCW 48.44.060 and 1947 c 268 s 6 are each amended to read as follows:

Except as otherwise provided in this chapter, any person who violates any of the provisions of this chapter (~~shall be~~) is guilty of a gross misdemeanor.

Sec. 10. RCW 48.46.027 and 1983 c 202 s 9 are each amended to read as follows:

(1) (~~No~~) A person (~~shall~~) may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health maintenance organization as defined in RCW 48.46.020 without first being (~~duly~~) registered (~~therefor~~) with the commissioner.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health maintenance organization domiciled in this state other than the memberships and bonds of a nonprofit corporation (~~shall be~~) is subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health maintenance organizations were domestic insurers.

(3) Any person violating any provision of subsection (~~(1) or~~) (2) of this section (~~shall be liable to a fine of not to exceed~~) is guilty of a gross misdemeanor and will, upon conviction, be fined not more than one thousand dollars (~~and imprisonment for not to exceed~~), or imprisoned for not more than six months, or both, for each (~~instance of such~~) violation.

NEW SECTION. Sec. 11. A new section is added to chapter 48.46 RCW to read as follows:

(1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves a health maintenance agreement.

(3) Any person who knowingly violates RCW 48.46.027(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.46.027(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund.

Sec. 12. RCW 48.46.420 and 1990 c 119 s 10 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, any health maintenance organization which, or person who, violates any provision of this chapter ((shall be)) is guilty of a gross misdemeanor.

(2) A health maintenance organization that fails to comply with the net worth requirements of this chapter must cure that defect in compliance with an order of the commissioner rendered in conformity with rules adopted pursuant to chapter 34.05 RCW. The commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrolled participants.

Sec. 13. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 2, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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)
- Sexually Violent Predator Escape (RCW 9A.76.115)
- 1X Assault of a Child 2 (RCW 9A.36.130)
- Controlled Substance Homicide (RCW 69.50.415)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 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))
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 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 (when the offender has a criminal history in this state or any other state that includes a sex offense or serious violent offense or the Washington equivalent) (RCW 69.50.401(a)(1)(i))
 - Possession of Ephedrine or any of its Salts or Isomers or Salts of Isomers, Pseudoephedrine or any of its Salts or Isomers or Salts of Isomers, Pressurized Ammonia Gas, or Pressurized Ammonia Gas Solution 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)
- Theft of Ammonia (RCW 69.55.010)
- 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)
- Civil Disorder Training (RCW 9A.48.120)
- 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 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))
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (except when the offender has a criminal history in this state or any other state that includes a sex offense or serious violent offense or the Washington equivalent) (RCW 69.50.401(a)(1)(i))
- 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 9A.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(3)(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)
 - Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(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
74.34.145)
- 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)
- 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)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW
79A.60.060)
- Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))

Endangerment with a Controlled Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hit and Run—Injury (RCW 46.52.020(4)(b))

Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2)(a))

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)

Unlawful transaction of health coverage as a health care service contractor (section 8(3) of this act)

Unlawful transaction of health coverage as a health maintenance organization (section 11(3) of this act)

Unlawful transaction of insurance business (section 3(3) of this act)

Unlicensed practice as an insurance professional (section 5(3) of this act)

Use of Proceeds of Criminal Profiteering
(RCW 9A.82.080 (1) and (2))

Vehicular Assault, by being under the
influence of intoxicating liquor or
any drug, or by the operation or
driving of a vehicle in a reckless
manner (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(3)(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)
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- 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)
- Identity Theft 2 (RCW 9.35.020(2)(b))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- 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 2 (RCW 9A.56.070(2))
 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))
Transaction of insurance business
beyond the scope of licensure
(section 5(4) of this act)
 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. 14. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 7, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))
 - 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)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - 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)
 - Civil Disorder Training (RCW 9A.48.120)
 - 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 79A.60.050)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
 - Introducing Contraband 1 (RCW 9A.76.140)
 - 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(3)(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))
 - Rape of a Child 3 (RCW 9A.44.079)
 - Theft of a Firearm (RCW 9A.56.300)
 - Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(b))
 - Child Molestation 3 (RCW 9A.44.089)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
 - 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 74.34.145)
 - 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)

- 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)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2)(a))
- 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)
- 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)
- Unlawful transaction of health coverage as a health care service contractor (section 8(3) of this act)
- Unlawful transaction of health coverage as a health maintenance organization (section 11(3) of this act)
- Unlawful transaction of insurance business (section 3(3) of this act)
- Unlicensed practice as an insurance professional (section 5(3) of this act)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)

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)

Malicious Injury to Railroad Property
(RCW 81.60.070)

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))

- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- 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))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(2)(b))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- 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)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.070(2))

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))

Transaction of insurance business beyond the scope of licensure (section 5(4) of this act)

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)

NEW SECTION. Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 16. Section 13 of this act expires July 1, 2004.

NEW SECTION. Sec. 17. Section 14 of this act takes effect July 1, 2004.

Passed by the Senate March 11, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 251

[Substitute Senate Bill 5616]

INSURER FOREIGN INVESTMENTS

AN ACT Relating to insurer foreign investments; and amending RCW 48.13.180.

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

Sec. 1. RCW 48.13.180 and 1947 c 79 s .13.18 are each amended to read as follows:

(1) An insurer authorized to transact insurance in a foreign country may invest any of its funds, in aggregate amount not exceeding its deposit and reserve obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to those required pursuant to this chapter for investments in the United States.

(2) Subject to the limitations in this chapter, an insurer may invest any of its funds, in an aggregate amount not exceeding ((five)) ten percent of its assets, in addition to any amount permitted pursuant to subsection (1) of this section, in obligations of ((the)) foreign governments ((of the Dominion of Canada or of Canadian)) including provinces ((or)), counties, municipalities, or similar entities, and in obligations and securities of ((Canadian)) foreign corporations,

which have not been in default during the five years next preceding date of acquisition, and ~~((which are otherwise of equal quality to like United States public or corporate securities as prescribed in this chapter))~~ if the foreign jurisdiction has a sovereign debt rating of SVO 1. However, an investment made in any one foreign country pursuant to this subsection shall not exceed five percent of the insurer's assets.

Passed by the Senate March 11, 2003.
Passed by the House April 14, 2003.
Approved by the Governor May 12, 2003.
Filed in Office of Secretary of State May 12, 2003.

CHAPTER 252

[Senate Bill 5726]

COOPERATIVE ASSOCIATIONS—DIRECTORS

AN ACT Relating to eligibility to be a director of a cooperative association; and amending RCW 23.86.080.

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

Sec. 1. RCW 23.86.080 and 1989 c 307 s 10 are each amended to read as follows:

(1) Associations shall be managed by a board of not less than three directors (which may be referred to as "trustees"). The directors shall be elected by ~~((and from))~~ the members of the association at such time, in such manner, and for such term of office as the bylaws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified.

(2) Except as provided in RCW 23.86.087, any vacancy occurring in the board of directors, and any directorship to be filled by reason of an increase in the number of directors, may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor in office.

Passed by the Senate March 19, 2003.
Passed by the House April 14, 2003.
Approved by the Governor May 12, 2003.
Filed in Office of Secretary of State May 12, 2003.

CHAPTER 253

[Senate Bill 5654]

FIRE PROTECTION DISTRICTS—NEWLY INCORPORATED CITIES

AN ACT Relating to fire protection in newly incorporated cities and towns; and amending RCW 52.04.161.

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

Sec. 1. RCW 52.04.161 and 1993 c 262 s 1 are each amended to read as follows:

If the area of a newly incorporated city or town is located in one or more fire protection districts, the city or town is deemed to have been annexed by the fire

protection district or districts effective immediately on the city's or town's official date of incorporation, unless the city or town council adopts a resolution during the interim transition period precluding the annexation of the newly incorporated city or town by the fire protection district or districts. The newly incorporated city or town shall remain annexed to the fire protection district or districts for the remainder of the year of the city's or town's official date of incorporation, or through the following year if such extension is approved by resolution adopted by the city or town council and by the board or boards of fire commissioners, and shall be withdrawn from the fire protection district or districts at the end of this period, unless a ballot proposition is adopted by the voters (~~(pursuant to RCW 52.04.071)~~) providing for annexation of the city or town to ((a)) one fire protection district or providing for the fire protection district or districts to annex only that area of the city or town located within the district. Such election shall be held pursuant to RCW 52.04.071 where possible, provided that in annexations to more than one fire protection district, the qualified elector shall reside within the boundaries of the appropriate fire protection district or in that area of the city located within the district.

If the city or town is withdrawn from the fire protection district or districts, the maximum rate of the first property tax levy that is imposed by the city or town after the withdrawal is calculated as if the city or town never had been annexed by the fire protection district or districts.

Passed by the Senate March 13, 2003.

Passed by the House April 16, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 254

[House Bill 1351]

TECHNICAL CORRECTIONS—INTERNAL REFERENCES

AN ACT Relating to correction of outdated internal references in the Revised Code of Washington; and amending RCW 8.26.020, 9.94A.731, 11.68.090, 11.97.010, 11.97.900, and 29.81.310.

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

Sec. 1. RCW 8.26.020 and 1988 c 90 s 2 are each amended to read as follows:

As used in this chapter:

(1) The term "state" means any department, commission, agency, or instrumentality of the state of Washington.

(2) The term "local public agency" applies to any county, city or town, or other municipal corporation or political subdivision of the state and any person who has the authority to acquire property by eminent domain under state law, or any instrumentality of any of the foregoing.

(3) The term "person" means any individual, partnership, corporation, or association.

(4)(a) The term "displaced person" means, except as provided in ~~((b))~~ (c) of this subsection, any person who moves from real property, or moves his personal property from real property:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, such real property in whole or in part for a program or project undertaken by a displacing agency; or

(ii) On which the person is a residential tenant or conducts a small business, a farm operation, or a business defined in this section, as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a displacing agency in any case in which the displacing agency determines that the displacement is permanent.

(b) Solely for the purposes of RCW 8.26.035 (1) and (2) and 8.26.065, the term "displaced person" includes any person who moves from real property, or moves his personal property from real property;

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, other real property in whole or in part on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(ii) As a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by a displacing agency where the displacing agency determines that the displacement is permanent.

~~((b))~~ (c) The term "displaced person" does not include:

(i) A person who has been determined, according to criteria established by the lead agency, to be either unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this chapter; or

(ii) In any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of the property at the time it was acquired) who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(5) The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) Solely for the purposes of RCW 8.26.035, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(6) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or for home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) The term "comparable replacement dwelling" means any dwelling that is (a) decent, safe, and sanitary; (b) adequate in size to accommodate the occupants; (c) within the financial means of the displaced person; (d) functionally equivalent; (e) in an area not subject to unreasonably adverse environmental conditions; and (f) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(8) For purposes of RCW 8.26.180 through 8.26.200, the term "acquiring agency" means:

(a) A state agency or local public agency that has the authority to acquire property by eminent domain under state law; or

(b) Any state agency, local public agency, or person that (i) does not have the authority to acquire property by eminent domain under state law and (ii) has been designated an "acquiring agency" under rules adopted by the lead agency. However, the lead agency may only designate a state agency, local public agency, or a person as an "acquiring agency" to the extent that it is necessary in order to qualify for federal financial assistance.

(9) The term "displacing agency" means the state agency, local public agency, or any person carrying out a program or project, with federal or state financial assistance, that causes a person to be a displaced person.

(10) The term "federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(11) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

(12) The term "lead agency" means the Washington state department of transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

EXPLANATORY NOTE

Corrects subparagraph lettering. As it exists now, RCW 8.26.020 has two versions of subparagraphs (4)(a)(i) and (ii). To correct this, the second version of subparagraphs (4)(a)(i) and (ii) have been relettered as subparagraphs (4)(b)(i) and (ii).

Sec. 2. RCW 9.94A.731 and 2000 c 28 s 29 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(~~((30))~~) (31) and 9.94A.725. 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 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 department.

(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.

EXPLANATORY NOTE

RCW 9.94A.030 was amended by 2001 2nd sp.s. c 12 s 301, changing subsection (30) to subsection (31).

Sec. 3. RCW 11.68.090 and 1997 c 252 s 66 are each amended to read as follows:

(1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under RCW 11.98.070 and chapters 11.100 and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

(2) Except as otherwise provided in chapter 11.108 RCW or elsewhere in order to preserve a marital deduction from estate taxes, a testator may by a will relieve the personal representative from any or all of the duties, restrictions, and liabilities imposed: Under common law; by chapters 11.54, 11.56, 11.100, 11.102, and ~~((11.104))~~ 11.104A RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a testator may likewise alter or deny any or all of the privileges and powers conferred by this title, and may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this title. If any common law or any statute referenced earlier in this subsection is in

conflict with a will, the will controls whether or not specific reference is made in the will to this section. However, notwithstanding the rest of this subsection, a personal representative may not be relieved of the duty to act in good faith and with honest judgment.

EXPLANATORY NOTE

Changes a reference to chapter 11.104 RCW, which has been replaced by chapter 11.104A RCW.

Sec. 4. RCW 11.97.010 and 1993 c 339 s 1 are each amended to read as follows:

The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and (~~(11.104)~~) 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 11.98.200 through 11.98.240 and 11.95.100 through 11.95.150. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment.

EXPLANATORY NOTE

Changes a reference to chapter 11.104 RCW, which has been replaced by chapter 11.104A RCW.

Sec. 5. RCW 11.97.900 and 1985 c 30 s 39 are each amended to read as follows:

This chapter applies to the provisions of chapters 11.95, 11.98, 11.100, and (~~(11.104)~~) 11.104A RCW and to RCW 11.106.020.

EXPLANATORY NOTE

Changes a reference to chapter 11.104 RCW, which has been replaced by chapter 11.104A RCW.

Sec. 6. RCW 29.81.310 and 1999 c 260 s 11 are each amended to read as follows:

(1) The maximum number of words for statements submitted by candidates is as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; president and vice-president, United States senator, United States representative, and governor, three hundred words.

(2) Arguments written by committees under RCW (~~(29.81.230)~~) 29.81.240 may not exceed two hundred fifty words in length.

(3) Rebuttal arguments written by committees may not exceed seventy-five words in length.

(4) The secretary of state shall allocate space in the pamphlet based on the number of candidates or nominees for each office.

EXPLANATORY NOTE

RCW 29.81.240 covers arguments in the voters' pamphlet written by committees.

Passed by the House February 28, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 255

[Second Substitute Senate Bill 5890]

FARM WORKERS—MEDICAL MONITORING

AN ACT Relating to a pilot project by the department of labor and industries to determine the feasibility and benefits for medical monitoring of agricultural workers; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature is interested in tracking the rule development and implementation process for cholinesterase medical monitoring of farm workers who handle cholinesterase-inhibiting pesticides. The department of labor and industries and stakeholders representing agricultural employers and employees shall report to the house commerce and labor committee and the senate agriculture committee by September 1, 2003, and by December 1, 2003, on the status of the rule development and implementation.

Passed by the Senate April 22, 2003.

Passed by the House April 18, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 256

[Substitute Senate Bill 5601]

PHYSICIANS—COMMUNITY CLINICS

AN ACT Relating to physicians providing care at community clinics; and amending RCW 4.24.300.

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

Sec. 1. RCW 4.24.300 and 1985 c 443 s 19 are each amended to read as follows:

(1) Any person, including but not limited to a volunteer provider of emergency or medical services, who without compensation or the expectation of compensation renders emergency care at the scene of an emergency or who participates in transporting, not for compensation, therefrom an injured person or persons for emergency medical treatment shall not be liable for civil damages

resulting from any act or omission in the rendering of such emergency care or in transporting such persons, other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person rendering emergency care during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such care is excluded from the protection of this subsection.

(2) Any physician licensed under chapter 18.57 or 18.71 RCW in the state of Washington who, without compensation or the expectation of compensation, provides health care services at a community clinic that is a public or private tax exempt corporation is not liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

Passed by the Senate March 13, 2003.

Passed by the House April 14, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 257

[Substitute Senate Bill 5327]

DENTAL HYGIENISTS

AN ACT Relating to dental hygienists; and amending RCW 18.29.050 and 69.41.010.

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

Sec. 1. RCW 18.29.050 and 1997 c 37 s 1 are each amended to read as follows:

Any person licensed as a dental hygienist in this state may remove deposits and stains from the surfaces of the teeth, may apply topical preventive or prophylactic agents, may polish and smooth restorations, may perform root planing and soft-tissue curettage, and may perform other dental operations and services delegated to them by a licensed dentist: PROVIDED HOWEVER, That licensed dental hygienists shall in no event perform the following dental operations or services:

(1) Any surgical removal of tissue of the oral cavity;

(2) Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician, except that a hygienist may place antimicrobials pursuant to the order of a licensed dentist and under the dentist's required supervision;

(3) Any diagnosis for treatment or treatment planning; or

(4) The taking of any impression of the teeth or jaw, or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

Such licensed dental hygienists may perform dental operations and services only under the supervision of a licensed dentist, and under such supervision may be employed by hospitals, boards of education of public or private schools, county boards, boards of health, or public or charitable institutions, or in dental offices.

Sec. 2. RCW 69.41.010 and 2000 c 8 s 2 are each amended to read as follows:

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

(1) "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.

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

(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, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 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.

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

Passed by the Senate April 21, 2003.

Passed by the House April 8, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 258

[Substitute Senate Bill 5829]

NURSING TECHNICIANS

AN ACT Relating to nursing technicians; amending RCW 18.79.240; reenacting and amending RCW 18.130.040; adding new sections to chapter 18.79 RCW; adding a new section to chapter 70.41 RCW; adding a new section to chapter 18.51 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds a need to provide additional work-related opportunities for nursing students. Nursing students enrolled in bachelor of science programs or associate degree programs, working within the

limits of their education, gain valuable judgment and knowledge through expanded work opportunities.

NEW SECTION. Sec. 2. (1) "Nursing technician" means a nursing student employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, who:

(a) Is currently enrolled in good standing in a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination from the secretary that there is good cause to continue the registration period, as defined by the secretary in rule.

(2) No person may practice or represent oneself as a nursing technician by use of any title or description of services without being registered under this chapter, unless otherwise exempted by this chapter.

(3) The commission may adopt rules to implement this act.

NEW SECTION. Sec. 3. (1) Nursing technicians are authorized to perform specific nursing functions within the limits of their education, up to their skill and knowledge, but they may not:

(a) Administer chemotherapy, blood or blood products, intravenous medications, or scheduled drugs, or carry out procedures on central lines;

(b) Assume ongoing responsibility for assessments, planning, implementation, or evaluation of the care of patients;

(c) Function independently, act as a supervisor, or delegate tasks to licensed practical nurses, nursing assistants, or unlicensed personnel; or

(d) Perform or attempt to perform nursing techniques or procedures for which the nursing technician lacks the appropriate knowledge, experience, and education.

(2) Nursing technicians may function only under the direct supervision of a registered nurse who agrees to act as supervisor and is immediately available to the nursing technician. The supervising registered nurse must have an unrestricted license with at least two years of clinical practice in the setting where the nursing technician works.

(3) Nursing technicians may only perform specific nursing functions based upon and limited to their education and when they have demonstrated the ability and been verified to safely perform these functions by the nursing program in which the nurse technician is enrolled. The nursing program providing verification is immune from liability for any nursing function performed or not performed by the nursing technician.

(4) Nursing technicians are responsible and accountable for their specific nursing functions.

NEW SECTION. Sec. 4. (1) Applications for registration must be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for registration provided for in chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee must accompany the application.

(2) An applicant for registration as a nursing technician shall submit:

(a) A signed statement from the applicant's nursing program verifying enrollment in, or graduation from, the nursing program; and

(b) A signed statement from the applicant's employer certifying that the employer understands the role of the nursing technician and agrees to meet the requirements of subsection (4) of this section.

(3) The secretary shall issue a registration to an applicant who has met the requirements for registration or deny a registration to an applicant who does not meet the requirements, except that proceedings concerning the denial of registration based on unprofessional conduct or impairment are governed by the uniform disciplinary act, chapter 18.130 RCW.

(4) The employer:

(a) Shall not require the nursing technician to work beyond his or her education and training;

(b) Shall verify that the nursing technician continues to qualify as a nursing technician as described in section 2 of this act;

(c) Shall advise the department and nursing program of any practice-related action taken against the nursing technician;

(d) Shall maintain documentation of the specific nursing functions the nursing technician is authorized to perform; and

(e) Shall provide training regarding the provisions of this act, including procedures for filing a complaint with the department of health or the department of social and health services concerning violations of this act, to all nursing technicians and registered nurses who shall supervise nursing technicians and document the training and make it available for any inspection or survey.

NEW SECTION. Sec. 5. The secretary shall establish by rule the procedural requirements and fees for renewal of the registration. Failure to renew invalidates the registration and all privileges granted by the registration. For renewal of registration, a nursing technician must attest that he or she continues to qualify as a nursing technician as described in section 2 of this act.

Sec. 6. RCW 18.79.240 and 2000 c 64 s 3 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~~) technicians;

(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. 7. RCW 18.130.040 and 2002 c 223 s 6 and 2002 c 216 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;
- (vii) Acupuncturists licensed under chapter 18.06 RCW;
- (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
- (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
- (x) Persons registered under chapter 18.19 RCW;
- (xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;
- (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
- (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
- (xiv) Health care assistants certified under chapter 18.135 RCW;
- (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
- (xvi) Chemical dependency professionals certified under chapter 18.205 RCW;
- (xvii) Sex offender treatment providers certified under chapter 18.155 RCW;
- (xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
- (xix) Denturists licensed under chapter 18.30 RCW;
- (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;
- (xxi) Surgical technologists registered under chapter 18.215 RCW; and
- (xxii) Recreational therapists.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The podiatric medical board as established in chapter 18.22 RCW;
- (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
- (iii) The dental quality assurance commission as established in chapter 18.32 RCW;
- (iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

NEW SECTION. Sec. 8. A new section is added to chapter 70.41 RCW to read as follows:

The department shall investigate complaints of violations of sections 3 and 4 of this act by an employer. The department shall maintain records of all employers that have violated sections 3 and 4 of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 18.51 RCW to read as follows:

The department shall investigate complaints of violations of sections 3 and 4 of this act by an employer. The department shall maintain records of all employers that have violated sections 3 and 4 of this act.

NEW SECTION. Sec. 10. Sections 1 through 5 of this act are each added to chapter 18.79 RCW.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate April 21, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 259

[Senate Bill 6057]

BASIC HEALTH CARE—ENROLLMENT

AN ACT Relating to basic health care plan enrollment; amending RCW 43.72.900; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 43.72.900 and 2002 c 371 s 909 and 2002 c 2 s 2 (Initiative Measure No. 773) are each amended to read as follows:

(1) The health services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Subject to the transfers described in subsection (3) of this section, moneys in the account may be expended only for maintaining and expanding health services access for low-income residents, maintaining and expanding the public health system, maintaining and improving the capacity of the health care system, containing health care costs, and the regulation, planning, and administering of the health care system.

(2) Funds deposited into the health services account under RCW 82.24.028 and 82.26.028 shall be used solely as follows:

(a) Five million dollars for the state fiscal year beginning July 1, 2002, and five million dollars for the state fiscal year beginning July 1, 2003, shall be appropriated by the legislature for programs that effectively improve the health of low-income persons, including efforts to reduce diseases and illnesses that harm low-income persons. The department of health shall submit a report to the legislature on March 1, 2002, evaluating the cost-effectiveness of programs that improve the health of low-income persons and address diseases and illnesses that disproportionately affect low-income persons, and making recommendations to the legislature on which of these programs could most effectively utilize the funds appropriated under this subsection.

(b) Ten percent of the funds deposited into the health services account under RCW 82.24.028 and 82.26.028 remaining after the appropriation under (a) of this subsection shall be transferred no less frequently than annually by the treasurer to the tobacco prevention and control account established by RCW 43.79.480. The funds transferred shall be used exclusively for implementation of the Washington state tobacco prevention and control plan and shall be used only to supplement, and not supplant, funds in the tobacco prevention and control account as of January 1, 2001, however, these funds may be used to replace funds appropriated by the legislature for further implementation of the Washington state tobacco prevention and control plan for the biennium beginning July 1, 2001. For each state fiscal year beginning on and after July 1,

2002, the legislature shall appropriate no less than twenty-six million two hundred forty thousand dollars from the tobacco prevention and control account for implementation of the Washington state tobacco prevention and control plan.

(c) Because of its demonstrated effectiveness in improving the health of low-income persons and addressing illnesses and diseases that harm low-income persons, the remainder of the funds deposited into the health services account under RCW 82.24.028 and 82.26.028 shall be appropriated solely for Washington basic health plan enrollment as provided in chapter 70.47 RCW. ~~((Funds appropriated pursuant to this subsection (2)(c) must supplement, and not supplant, the level of state funding needed to support enrollment of a minimum of one hundred twenty five thousand persons for the fiscal year beginning July 1, 2002, and every fiscal year thereafter. The health care authority may enroll up to twenty thousand additional persons in the basic health plan during the biennium beginning July 1, 2001, above the base level of one hundred twenty-five thousand enrollees. The health care authority may enroll up to fifty thousand additional persons in the basic health plan during the biennium beginning July 1, 2003, above the base level of one hundred twenty-five thousand enrollees. For each biennium beginning on and after July 1, 2005, the health care authority may enroll up to at least one hundred seventy-five thousand enrollees.))~~ Funds appropriated under this subsection may be used to support outreach and enrollment activities only to the extent necessary to achieve the enrollment goals described in this section.

(3) Prior to expenditure for the purposes described in subsection (2) of this section, funds deposited into the health services account under RCW 82.24.028 and 82.26.028 shall first be transferred to the following accounts to ensure the continued availability of previously dedicated revenues for certain existing programs:

(a) To the violence reduction and drug enforcement account under RCW 69.50.520, two million two hundred forty-nine thousand five hundred dollars for the state fiscal year beginning July 1, 2001, four million two hundred forty-eight thousand dollars for the state fiscal year beginning July 1, 2002, seven million seven hundred eighty-nine thousand dollars for the biennium beginning July 1, 2003, six million nine hundred thirty-two thousand dollars for the biennium beginning July 1, 2005, and six million nine hundred thirty-two thousand dollars for each biennium thereafter, as required by RCW 82.24.020(2);

(b) To the health services account under this section, nine million seventy-seven thousand dollars for the state fiscal year beginning July 1, 2001, seventeen million one hundred eighty-eight thousand dollars for the state fiscal year beginning July 1, 2002, thirty-one million seven hundred fifty-five thousand dollars for the biennium beginning July 1, 2003, twenty-eight million six hundred twenty-two thousand dollars for the biennium beginning July 1, 2005, and twenty-eight million six hundred twenty-two thousand dollars for each biennium thereafter, as required by RCW 82.24.020(3); and

(c) To the water quality account under RCW 70.146.030, two million two hundred three thousand five hundred dollars for the state fiscal year beginning July 1, 2001, four million two hundred forty-four thousand dollars for the state fiscal year beginning July 1, 2002, eight million one hundred eighty-two thousand dollars for the biennium beginning July 1, 2003, seven million eight hundred eighty-five thousand dollars for the biennium beginning July 1, 2005,

and seven million eight hundred eighty-five thousand dollars for each biennium thereafter, as required by RCW 82.24.027(2)(a).

During the 2001-2003 fiscal biennium, the legislature may transfer from the health services account such amounts as reflect the excess fund balance of the account.

NEW SECTION. Sec. 2. This act is intended to apply retroactively to January 1, 2002.

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 by the Senate April 15, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 12, 2003.

Filed in Office of Secretary of State May 12, 2003.

CHAPTER 260

[Engrossed Substitute House Bill 1002]

MERCURY REDUCTION

AN ACT Relating to mercury reduction and education; adding a new chapter to Title 70 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 the protection of the environment is of utmost importance to ensuring the health and safety of the citizens of the state of Washington. The legislature further finds that fish caught commercially and recreationally provide an important element in a healthy diet, and that the fish caught in Washington waters need to be protected from any sources that might impact the healthfulness of consuming such fish. The legislature further finds that species caught in our region are safe for citizens to eat.*

Therefore, the legislature intends to take all measures necessary to ensure that fish caught within our state's waters continue to be safe from any degrading influences.

**Sec. 1 was vetoed. See message at end of chapter.*

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

(1) "Automotive mercury switch" includes a convenience switch, such as a switch for a trunk or hood light, and a mercury switch in antilock brake systems.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Health care facility" includes a hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

(5) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multicomponent

product containing mercury, the manufacturer is the last manufacturer to produce or assemble the product. If the multicomponent product or mercury-added product is produced in a foreign country, the manufacturer is the first importer or domestic distributor.

(6) "Mercury-added button-cell battery" means a button-cell battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

(7) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel, and other similar products. Mercury-added novelty does not include games, toys, or products that require a button-cell or lithium battery, liquid crystal display screens, or a lamp that contains mercury.

(8) "Mercury-added product" means a product, commodity, or chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, or chemical in order to provide a specific characteristic, appearance, or quality, or to perform a specific function, or for any other reason. Mercury-added products include, but are not limited to, mercury thermometers, mercury thermostats, and mercury switches in motor vehicles.

(9) "Mercury manometer" means a mercury-added product that is used for measuring blood pressure.

(10) "Mercury thermometer" means a mercury-added product that is used for measuring temperature.

(11) "Retailer" means a retailer of a mercury-added product.

NEW SECTION. Sec. 3. (1) Effective January 1, 2004, a manufacturer, wholesaler, or retailer may not knowingly sell at retail a fluorescent lamp if the fluorescent lamp contains mercury and was manufactured after November 30, 2003, unless the fluorescent lamp is labeled in accordance with the guidelines listed under subsection (2) of this section. Primary responsibility for affixing labels required under this section is on the manufacturer, and not on the wholesaler or retailer.

(2) Except as provided in subsection (3) of this section, a lamp is considered labeled pursuant to subsection (1) of this section if the lamp has all of the following:

(a) A label affixed to the lamp that displays the internationally recognized symbol for the element mercury; and

(b) A label on the lamp's packaging that: (i) Clearly informs the purchaser that mercury is present in the item; (ii) explains that the fluorescent lamp should be disposed of according to applicable federal, state, and local laws; and (iii) provides a toll-free telephone number, and a uniform resource locator internet address to a web site, that contains information on applicable disposal laws.

(3) The manufacturer of a mercury-added lamp is in compliance with the requirements of this section if the manufacturer is in compliance with the labeling requirements of another state.

(4) The provisions of this section do not apply to products containing mercury-added lamps.

NEW SECTION. Sec. 4. The department of health must develop an educational plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products.

NEW SECTION. Sec. 5. A school may not purchase for use in a primary or secondary classroom bulk elemental mercury or chemical mercury compounds. By January 1, 2006, all primary and secondary schools in the state must remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.

NEW SECTION. Sec. 6. (1) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a mercury-added novelty. A manufacturer of mercury-added novelties must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining mercury-added novelty inventory.

(2)(a) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a manometer used to measure blood pressure or a thermometer that contains mercury. This subsection (2)(a) does not apply to:

(i) An electronic thermometer with a button cell battery containing mercury;

(ii) A thermometer that contains mercury and that is used for food research and development or food processing, including meat, dairy products, and pet food processing;

(iii) A thermometer that contains mercury and that is a component of an animal agriculture climate control system or industrial measurement system or for veterinary medicine until such a time as the system is replaced or a nonmercury component for the system or application is available;

(iv) A thermometer or manometer that contains mercury that is used for calibration of other thermometers, manometers, apparatus, or equipment, unless a nonmercury calibration standard is approved for the application by the national institute of standards and technology;

(v) A thermometer that is provided by prescription. A manufacturer of a mercury thermometer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur; or

(vi) A manometer or thermometer sold or distributed to a hospital, or a health care facility controlled by a hospital, if the hospital has adopted a plan for mercury reduction consistent with the goals of the mercury chemical action plan developed by the department under section 302, chapter 371, Laws of 2002.

(b) A manufacturer of thermometers that contain mercury must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining thermometer inventory.

(3) Effective January 1, 2006, no person may sell, install, or reinstall a commercial or residential thermostat that contains mercury unless the manufacturer of the thermostat conducts or participates in a thermostat recovery or recycling program designed to assist contractors in the proper disposal of thermostats that contain mercury in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource conservation and recovery act.

(4) No person may sell, offer for sale, or distribute for sale or use in this state a motor vehicle manufactured after January 1, 2006, if the motor vehicle contains an automotive mercury switch.

(5) Nothing in this section restricts the ability of a manufacturer, importer, or domestic distributor from transporting products through the state, or storing products in the state for later distribution outside the state.

NEW SECTION. Sec. 7. (1) The department of general administration must, by January 1, 2005, revise its rules, policies, and guidelines to implement the purpose of this chapter.

(2) The department of general administration must give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components, unless: (a) There is no economically feasible nonmercury-added alternative that performs a similar function; or (b) the product containing mercury is designed to reduce electricity consumption by at least forty percent and there is no nonmercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product. In circumstances where a nonmercury-added product is not available, preference must be given to the purchase of products that contain the least amount of mercury added to the product necessary for the required performance.

NEW SECTION. Sec. 8. The department is authorized to participate in a regional or multistate clearinghouse to assist in carrying out any of the requirements of this chapter. A clearinghouse may also be used for examining notification and label requirements, developing education and outreach activities, and maintaining a list of all mercury-added products.

NEW SECTION. Sec. 9. A violation of this chapter is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

NEW SECTION. Sec. 10. Nothing in this chapter applies to crematories as that term is defined in RCW 68.04.070.

NEW SECTION. Sec. 11. Any fiscal impact on the department or the department of health that results from the implementation of this chapter must be paid for out of funds that are appropriated by the legislature from the state toxics control account for the implementation of the department's persistent bioaccumulative toxic chemical strategy.

NEW SECTION. Sec. 12. Nothing in this chapter applies to prescription drugs regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), to biological products regulated by the food and drug administration under the public health service act (42 U.S.C. Sec. 262 et seq.), or to any substance that may be lawfully sold over-the-counter without a prescription under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.).

NEW SECTION. Sec. 13. Nothing in section 3, 6 (1), (3), or (4), or 7 of this act applies to medical equipment or reagents used in medical or research

tests regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.).

NEW SECTION. Sec. 14. The department of ecology shall petition the United States environmental protection agency requesting development of a national mercury repository site.

NEW SECTION. Sec. 15. Sections 1 through 13 of this act constitute a new chapter in Title 70 RCW.

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 14, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 14, 2003.

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

"I am returning herewith, without my approval as to section 1, Engrossed Substitute House Bill No. 1002 entitled:

"AN ACT Relating to mercury reduction and education;"

This bill provides protection for our environment and for the people of our state from potential contamination by mercury, a chemical so toxic that 1/20th of a teaspoon can contaminate a 20-acre lake to the point where fish cannot be consumed. There is an estimated 1,000 pounds of mercury disposed of in our state every year. This bill will enable us to reduce the public health threat posed by this chemical.

Unfortunately, the intent section of this bill states, without qualification, that fish caught in our region are safe to eat. In fact, our Department of Health has issued thirteen fish consumption advisories for a variety of species of fish in waters around the state. These advisories demonstrate that contamination of our waters is still a serious issue. We need to address these sources of contamination and prevent them, rather than assert they do not exist. This bill is a dramatic example of how we can step-up to our obligations and prevent mercury from entering our environment, threatening human health and the health of our wildlife.

For this reason, I have vetoed section 1 of Engrossed Substitute House Bill No. 1002.

With the exception of section 1, Engrossed Substitute House Bill No. 1002 is approved."

CHAPTER 261

[Second Substitute House Bill 1240]

BIODIESEL—TAX INCENTIVES

AN ACT Relating to tax incentives for biodiesel and alcohol fuel production; amending RCW 82.29A.135 and 82.04.260; adding a new section to chapter 84.36 RCW; adding a new chapter to Title 82 RCW; creating a new section; providing effective dates; providing a contingent effective date; providing expiration dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Alcohol fuel" has the same meaning as provided in RCW 82.29A.135.
- (2) "Applicant" means a person applying for a tax deferral under this chapter.
- (3) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(4) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(5) "Department" means the department of revenue.

(6) "Eligible area" means a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department effective for the period July 1st through June 30th, or a county that has a population of less than two hundred twenty-five thousand as determined by the office of financial management and has an area greater than two hundred twenty-five square miles.

(7)(a) "Eligible investment project" means an investment project in an eligible area.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(c) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(8) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(9) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(10) "Person" has the meaning given in RCW 82.04.030.

(11) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(12) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such

as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(13) "Recipient" means a person receiving a tax deferral under this chapter.

(14) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

NEW SECTION. Sec. 2. (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department.

(2) The department shall rule on the application within sixty days. The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

NEW SECTION. Sec. 3. (1) 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 as defined in section 1 of this act, if the investment project is undertaken for the purpose of manufacturing biodiesel, biodiesel feedstock, or alcohol fuel.

(2) This section expires July 1, 2009.

NEW SECTION. Sec. 4. (1) For the purposes of this section:

(a) "Eligible area" means a designated community empowerment zone approved under RCW 43.31C.020 or a county containing a community empowerment zone.

(b) "Eligible investment project" means an investment project undertaken for the purpose of manufacturing biodiesel, biodiesel feedstock, or alcohol fuel that is located in an eligible area.

(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 section 3 of this act, 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. 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 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.

NEW SECTION. Sec. 5. (1) Each recipient of a deferral granted under this chapter after June 30, 2003, shall submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable.

(2) If, on the basis of a report under this section or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project are immediately due. For any taxes that are due, penalties and interest applicable to delinquent excise taxes shall 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.

(3) Deferred taxes need not be repaid if the department determines, in accordance with the provisions of subsection (1) of this section, that the recipient has met the requirements of this chapter for the seven calendar years following the certification by the department that the investment project has been operationally completed.

NEW SECTION. Sec. 6. The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages as requested by the department under this chapter.

NEW SECTION. Sec. 7. Chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. Sec. 8. Applications, reports, and any other information received by the department under this chapter shall not be confidential and shall be subject to disclosure.

NEW SECTION. Sec. 9. A new section is added to chapter 84.36 RCW to read as follows:

(1) For the purposes of this section:

(a) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements, and machines or implements of husbandry.

(b) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(c) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American Society of Testing and Materials specification D 6751 in effect as of January 1, 2003.

(2)(a) All buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of alcohol fuel, biodiesel fuel, or biodiesel feedstock, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, biodiesel fuel, or biodiesel feedstock, but not land necessary for growing of crops, which together comprise a new manufacturing facility or an addition to an existing manufacturing facility, are exempt from property taxation for the six assessment years following the date on which the facility or the addition to the existing facility becomes operational.

(b) For manufacturing facilities which produce products in addition to alcohol fuel, biodiesel fuel, or biodiesel feedstock, the amount of the property tax exemption shall be based upon the annual percentage of the total value of all products manufactured that is the value of the alcohol fuel, biodiesel fuel, and biodiesel feedstock manufactured.

(3) Claims for exemptions authorized by this section shall be filed with the county assessor on forms prescribed by the department of revenue and furnished by the assessor. Once filed, the exemption is valid for six years and shall not be renewed. The assessor shall verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, 2009.

The department of revenue may promulgate such rules, pursuant to chapter 34.05 RCW, as necessary to properly administer this section.

Sec. 10. RCW 82.29A.135 and 1985 c 371 s 3 are each amended to read as follows:

(1) For the purposes of this section((;));

(a) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements, and machines or implements of husbandry.

(b) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(c) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American Society of Testing and Materials specification D 6751 in effect as of January 1, 2003.

(2)(a) All leasehold interests in buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of alcohol fuel, biodiesel fuel, or biodiesel feedstock, the land upon which ((~~such~~)) this property is located, and land that is reasonably necessary in the manufacturing of alcohol

fuel, biodiesel fuel, or biodiesel feedstock, but not land necessary for growing of crops, which together comprise a new ~~((alcohol))~~ manufacturing facility or an addition to an existing ~~((alcohol))~~ manufacturing facility, are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) For ~~((alcohol))~~ manufacturing facilities which produce ~~((alcohol for use as))~~ products in addition to alcohol fuel ~~((and alcohol used for other purposes))~~, biodiesel fuel, or biodiesel feedstock, the amount of the leasehold tax exemption shall be based upon ~~((an annually determined percentage of the total gallons of alcohol produced that is sold and used as alcohol fuel))~~ the annual percentage of the total value of all products manufactured that is the value of the alcohol fuel, biodiesel fuel, and biodiesel feedstock manufactured.

(3) Claims for exemptions authorized by this section shall be filed with the department of revenue on forms prescribed by the department of revenue and furnished by the department of revenue. Once filed, the exemption is valid for six years and shall not be renewed. The department of revenue shall verify and approve ~~((such))~~ claims as the department of revenue determines to be justified and in accordance with this section. No claims may be filed after December 31, ~~((1992))~~ 2009.

The department of revenue may promulgate such rules, pursuant to chapter 34.05 RCW, as are necessary to properly administer this section.

Sec. 11. RCW 82.04.260 and 2001 2nd sp.s. c 25 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent;

(c) By canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record; ~~((and))~~

(d) Dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the

products manufactured multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record; and

(e) Alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135: as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent. This subsection (1)(e) expires July 1, 2009.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(8) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(9) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject

to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(10) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(11) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(12) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

NEW SECTION. Sec. 12. Section 9 of this act applies to taxes levied for collection in 2004 and thereafter.

NEW SECTION. Sec. 13. (1) Sections 9 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 1 through 8 of this act take effect July 1, 2004.

NEW SECTION. Sec. 14. Sections 1 through 8 of this act are null and void if the legislature passes and the governor signs any bill into law before July 1, 2004, that extends the termination date in RCW 82.60.050.

NEW SECTION. Sec. 15. Sections 1 through 8, 13, and 14 of this act constitute a new chapter in Title 82 RCW.

Passed by the House April 23, 2003.
Passed by the Senate April 9, 2003.
Approved by the Governor May 14, 2003.
Filed in Office of Secretary of State May 14, 2003.

CHAPTER 262

[Substitute Senate Bill 6012]
SHORELINE MANAGEMENT

AN ACT Relating to shoreline management; and amending RCW 90.58.060, 90.58.080, and 90.58.250.

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

Sec. 1. RCW 90.58.060 and 1995 c 347 s 304 are each amended to read as follows:

(1) The department shall periodically review and adopt guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100 for:

- (a) Development of master programs for regulation of the uses of shorelines; and
- (b) Development of master programs for regulation of the uses of shorelines of statewide significance.

(2) Before adopting or amending guidelines under this section, the department shall provide an opportunity for public review and comment as follows:

(a) The department shall mail copies of the proposal to all cities, counties, and federally recognized Indian tribes, and to any other person who has requested a copy, and shall publish the proposed guidelines in the Washington state register. Comments shall be submitted in writing to the department within sixty days from the date the proposal has been published in the register.

(b) The department shall hold at least four public hearings on the proposal in different locations throughout the state to provide a reasonable opportunity for residents in all parts of the state to present statements and views on the proposed guidelines. Notice of the hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state. If an amendment to the guidelines addresses an issue limited to one geographic area, the number and location of hearings may be adjusted consistent with the intent of this subsection to assure all parties a reasonable opportunity to comment on the proposed amendment. The department shall accept written comments on the proposal during the sixty-day public comment period and for seven days after the final public hearing.

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the

provisions of this chapter. The proposal shall then be published for adoption pursuant to the provisions of chapter 34.05 RCW.

(3) The department may (~~propose~~) adopt amendments to the guidelines not more than once each year. (~~At least once every five years the department shall conduct a review of the guidelines pursuant to the procedures outlined in subsection (2) of this section~~) Such amendments shall be limited to: (a) Addressing technical or procedural issues that result from the review and adoption of master programs under the guidelines; or (b) issues of guideline compliance with statutory provisions.

Sec. 2. RCW 90.58.080 and 1995 c 347 s 305 are each amended to read as follows:

(1) Local governments shall develop or amend (~~within twenty-four months after the adoption of guidelines as provided in RCW 90.58.060~~) a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(vi) On or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille Stevens Wahkiakum Walla Walla and Whitman counties and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before the effective date of this section, shall not be required to complete master program amendments until

seven years after the applicable date provided by subsection (2)(a)(iii) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section.

(4) Local governments shall conduct a review of their master programs at least once every seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:

(a) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(b) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(5) Local governments are encouraged to begin the process of developing or amending their master programs early and are eligible for grants from the department as provided by RCW 90.58.250, subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6)(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) Notwithstanding the provisions of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than December 1,

2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003.

Sec. 3. RCW 90.58.250 and 1971 ex.s. c 286 s 25 are each amended to read as follows:

(1) The legislature intends to eliminate the limits on state funding of shoreline master program development and amendment costs. The legislature further intends that the state will provide funding to local governments that is reasonable and adequate to accomplish the costs of developing and amending shoreline master programs consistent with the schedule established by RCW 90.58.080. Except as specifically described herein, nothing in this act is intended to alter the existing obligation, duties, and benefits provided by this act to local governments and the department.

(2) The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs and the provisions of RCW 90.58.080(7). Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program.

~~((No grant shall be made in an amount in excess of the recipient's contribution to the estimated cost of such program.))~~

Passed by the Senate April 26, 2003.

Passed by the House April 17, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 263

[Substitute Senate Bill 6073]

RECREATIONAL SHELLFISHING—FEES

AN ACT Relating to authorizing the increase of shellfish license fees to fund shellfish biotoxin testing and monitoring; adding a new section to chapter 77.32 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that testing and monitoring of beaches used for recreational shellfishing is essential to ensure the health of recreational shellfishers. The legislature also finds that it is essential to have a stable and reliable source of funding for such biotoxin testing and monitoring. The legislature also finds that the cost of the resident and nonresident personal use shellfish and seaweed licenses is undervalued and not properly aligned with neighboring states and provinces.

NEW SECTION. Sec. 2. A new section is added to chapter 77.32 RCW to read as follows:

In addition to the fees authorized in this chapter, the department shall include a surcharge to fund biotoxin testing and monitoring by the department of health of beaches used for recreational shellfishing, and to fund monitoring by the Olympic region harmful algal bloom program of the Olympic natural

resources center at the University of Washington. A surcharge of three dollars applies to resident and nonresident shellfish and seaweed licenses as authorized by RCW 77.32.520(2) (a) and (b); and a surcharge of two dollars applies to resident and nonresident adult combination licenses as authorized by RCW 77.32.470(2)(a). Amounts collected from these surcharges must be deposited in the general fund—local account managed by the department of health, except that one hundred fifty thousand dollars per year shall be deposited in the general fund—local account managed by the University of Washington.

Amounts in excess of the annual costs of the department of health recreational shellfish testing and monitoring program shall be transferred to the general fund by the department of health.

NEW SECTION. Sec. 3. The fee increase proposed in this act must be implemented in the department of fish and wildlife's license fee structure beginning July 1, 2003.

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 July 1, 2003.

Passed by the Senate April 17, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 264

[Engrossed Substitute Senate Bill 6072]

POLLUTION RESPONSE

AN ACT Relating to funding pollution abatement and response; amending RCW 46.12.040, 46.12.101, and 46.68.020; adding a new section to chapter 70.94 RCW; adding a new section to chapter 90.56 RCW; creating a new section; making appropriations; 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 70.94 RCW to read as follows:

(1) Money deposited in the segregated subaccount of the air pollution control account under RCW 46.68.020(2) shall be distributed as follows:

(a) Eighty-five percent shall be distributed to air pollution control authorities created under this chapter. The money must be distributed in direct proportion with the amount of fees imposed under RCW 46.12.080, 46.12.170, and 46.12.181 that are collected within the boundaries of each authority. However, an amount in direct proportion with those fees collected in counties for which no air pollution control authority exists must be distributed to the department.

(b) The remaining fifteen percent shall be distributed to the department.

(2) Money distributed to air pollution control authorities and the department under subsection (1) of this section must be used as follows:

(a) Eighty-five percent of the money received by an air pollution control authority or the department must be used to retrofit school buses with exhaust

emission control devices or to provide funding for fueling infrastructure necessary to allow school bus fleets to use alternative, cleaner fuels.

(b) The remaining fifteen percent may be used by the air pollution control authority or department to reduce vehicle air contaminant emissions and clean up air pollution, or reduce and monitor toxic air contaminants.

(3) Money in the air pollution control account may be spent by the department only after appropriation.

(4) The department shall provide a report to the legislative transportation committees on the progress of the implementation of this section by December 31, 2004.

NEW SECTION. Sec. 2. The sum of ten million dollars is appropriated for the biennium ending June 30, 2005, from the segregated subaccount of the air pollution control account to the department of ecology for the purposes of section 1 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 90.56 RCW to read as follows:

The vessel response account is created in the state treasury. Grants, gifts, and federal funds may be deposited into the account. Oil spill penalties assessed against ships under RCW 90.56.330 and 90.48.144 shall also be deposited into the account as well as the money distributed under RCW 46.68.020(2). Moneys in the account may be spent only after appropriation. The department of ecology is authorized to utilize the vessel response account to preposition a dedicated rescue tug at the entrance to the Strait of Juan de Fuca to reduce the risk of major maritime accidents and oil spills on the outer coast and western strait. Prior to authorizing the rescue tug to respond to a distressed vessel, the department shall work with the United States Coast Guard and industry to determine if another capable, unencumbered commercial tug is available in the area that can respond. If such a tug can respond without increasing the risk of a casualty, it should be deployed as the tug of choice and the state-contracted rescue tug should not be taken off standby duty. The department is also authorized to spot charter tugs as needed during major storms and other high risk periods to protect maritime commerce and the environment anywhere in state waters.

The department shall not proceed with rule making related to emergency towing pursuant to chapter 88.46 RCW, so long as the deposit of the fee into the vessel response account under RCW 46.68.020(2) is continued and is appropriated for the purpose of the dedicated rescue tug.

NEW SECTION. Sec. 4. The department of ecology shall complete an evaluation of tug escort requirements for laden tankers to determine if the current escort system requirements under RCW 88.16.190 should be modified to recognize safety enhancements of the new double hull tankers deployed with redundant systems. The department shall provide a report with recommendations to the governor and the appropriate committees of the legislature by January 1, 2005.

NEW SECTION. Sec. 5. (1) The sum of two million eight hundred seventy-six thousand dollars is appropriated for the biennium ending June 30, 2005, from the vessel response account to the department of ecology for the purposes of section 3 of this act.

(2) The sum of two hundred thousand dollars is appropriated for the biennium ending June 30, 2005, from the oil spill prevention account to the department of ecology for the purposes of section 4 of this act.

**Sec. 6. RCW 46.12.040 and 2002 c 352 s 3 are each amended to read as follows:*

(1) The application accompanied by a draft, money order, certified bank check, or cash for five dollars, together with the last preceding certificates or other satisfactory evidence of ownership, shall be forwarded to the director.

(2) The fee shall be in addition to any other fee for the license registration of the vehicle. The certificate of ownership shall not be required to be renewed annually, or at any other time, except as by law provided.

(3) In addition to the application fee and any other fee for the license registration of a vehicle, the department shall collect from the applicant a fee of fifteen dollars for vehicles previously registered in any other state or country. ((The proceeds from the fee shall be deposited in the motor vehicle fund. For vehicles requiring a physical examination, the inspection fee shall be fifty dollars and shall be deposited in the motor vehicle fund.))

**Sec. 6 was vetoed. See message at end of chapter.*

Sec. 7. RCW 46.12.101 and 2002 c 279 s 1 are each amended to read as follows:

A transfer of ownership in a motor vehicle is perfected by compliance with the requirements of this section.

(1) If an owner transfers his or her interest in a vehicle, other than by the creation, deletion, or change of a security interest, the owner shall, at the time of the delivery of the vehicle, execute an assignment to the transferee and provide an odometer disclosure statement under RCW 46.12.124 on the certificate of ownership or as the department otherwise prescribes, and cause the certificate and assignment to be transmitted to the transferee. The owner shall notify the department or its agents or subagents, in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, the transferee's driver's license number if available, and such description of the vehicle, including the vehicle identification number, the license plate number, or both, as may be required in the appropriate form provided or approved for that purpose by the department. The report of sale will be deemed properly filed if all information required in this section is provided on the form and includes a department-authorized notation that the document was received by the department, its agents, or subagents on or before the fifth day after the sale of the vehicle, excluding Saturdays, Sundays, and state and federal holidays. Agents and subagents shall immediately electronically transmit the seller's report of sale to the department. Reports of sale processed and recorded by the department's agents or subagents may be subject to fees as specified in RCW 46.01.140 (4)(a) or (5)(b). By January 1, 2003, the department shall create a system enabling the seller of a vehicle to transmit the report of sale electronically. The system created by the department must immediately indicate on the department's vehicle record that a seller's report of sale has been filed.

(2) The requirements of subsection (1) of this section to provide an odometer disclosure statement apply to the transfer of vehicles held for lease when transferred to a lessee and then to the lessor at the end of the leasehold and to vehicles held in a fleet when transferred to a purchaser.

(3) Except as provided in RCW 46.70.122 the transferee shall within fifteen days after delivery to the transferee of the vehicle, execute the application for a new certificate of ownership in the same space provided therefor on the certificate or as the department prescribes, and cause the certificates and application to be transmitted to the department.

(4) Upon request of the owner or transferee, a secured party in possession of the certificate of ownership shall, unless the transfer was a breach of its security agreement, either deliver the certificate to the transferee for transmission to the department or, when the secured party receives the owner's assignment from the transferee, it shall transmit the transferee's application for a new certificate, the existing certificate, and the required fee to the department. Compliance with this section does not affect the rights of the secured party.

(5) If a security interest is reserved or created at the time of the transfer, the certificate of ownership shall be retained by or delivered to the person who becomes the secured party, and the parties shall comply with the provisions of RCW 46.12.170.

(6) If the purchaser or transferee fails or neglects to make application to transfer the certificate of ownership and license registration within fifteen days after the date of delivery of the vehicle, he or she shall on making application for transfer be assessed a twenty-five dollar penalty on the sixteenth day and two dollars additional for each day thereafter, but not to exceed one hundred dollars. The director may by rule establish conditions under which the penalty will not be assessed when an application for transfer is delayed for reasons beyond the control of the purchaser. Conditions for not assessing the penalty may be established for but not limited to delays caused by:

- (a) The department requesting additional supporting documents;
- (b) Extended hospitalization or illness of the purchaser;
- (c) Failure of a legal owner to release his or her interest;
- (d) Failure, negligence, or nonperformance of the department, auditor, or subagent.

Failure or neglect to make application to transfer the certificate of ownership and license registration within forty-five days after the date of delivery of the vehicle is a misdemeanor.

(7) Upon receipt of an application for reissue or replacement of a certificate of ownership and transfer of license registration, accompanied by the endorsed certificate of ownership or other documentary evidence as is deemed necessary, the department shall, if the application is in order and if all provisions relating to the certificate of ownership and license registration have been complied with, issue new certificates of title and license registration as in the case of an original issue and shall transmit the fees together with an itemized detailed report to the state treasurer(~~(, to be deposited in the motor vehicle fund)~~).

(8) Once each quarter the department shall report to the department of revenue a list of those vehicles for which a seller's report has been received but no transfer of title has taken place.

Sec. 8. RCW 46.68.020 and 2002 c 352 s 21 are each amended to read as follows:

The director shall forward all fees for certificates of ownership or other moneys accruing under the provisions of chapter 46.12 RCW to the state treasurer, together with a proper identifying detailed report. The state treasurer

shall credit such moneys (~~(to the multimodal transportation account in RCW 47.66.070, and all expenses incurred in carrying out the provisions of that chapter shall be paid from such account as authorized by legislative appropriation))~~ as follows:

(1) The fees collected under RCW 46.12.040(1) shall be credited to the multimodal transportation account in RCW 47.66.070.

(2)(a) Beginning with the effective date of this section, and until July 1, 2008, the fees collected under RCW 46.12.080, 46.12.170, and 46.12.181 shall be credited as follows:

(i) 58.12 percent shall be credited to a segregated subaccount of the air pollution control account in RCW 70.94.015;

(ii) 15.71 percent shall be credited to the vessel response account created in section 3 of this act; and

(iii) The remainder shall be credited into the transportation 2003 account (nickel account).

(b) Beginning July 1, 2008, and thereafter, the fees collected under RCW 46.12.080, 46.12.170, and 46.12.181 shall be credited to the transportation 2003 account (nickel account).

(3) All other fees under chapter 46.12 RCW shall be credited to the motor vehicle account, unless specified otherwise.

NEW SECTION. Sec. 9. Sections 1 and 3 of this act expire July 1, 2008.

Passed by the Senate April 26, 2003.

Passed by the House April 27, 2003.

Approved by the Governor May 14, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 14, 2003.

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

"I am returning herewith, without my approval as to section 6, Engrossed Substitute Senate Bill No. 6072 entitled:

"AN ACT Relating to funding pollution abatement and response;"

This bill establishes funding for a tugboat to reduce the risk of major maritime accidents, to enhance emission control for school buses, and to reduce and monitor vehicle air emissions.

I support these important environmental responsibilities, and appreciate the work of the legislature to provide for these activities within existing funds. However, section 6 of this bill would inadvertently eliminate the fifty-dollar physical inspection fee required for some out-of-state vehicles prior to registration in Washington State. I am, therefore, vetoing section 6 of this bill in order to maintain the inspection fee, which provides \$2.5 million annual revenue for this important public safety program.

For these reasons, I have vetoed section 6 of Engrossed Substitute Senate Bill No. 6072.

With the exception of section 6, of Engrossed Substitute Senate Bill No. 6072 is approved."

CHAPTER 265

[Engrossed Substitute Senate Bill 5178]

LEGISLATIVE INTERNATIONAL TRADE ACCOUNT

AN ACT Relating to funding and expenditures for legislative trade hosting and mission activities; amending RCW 42.52.150; adding a new section to chapter 44.04 RCW; and adding a new section to chapter 42.52 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 44.04 RCW to read as follows:

The legislative international trade account is created in the custody of the state treasurer. All moneys received by the president of the senate and the secretary of state from gifts, grants, and endowments for international trade hosting, international relations, and international missions activities must be deposited in the account. Only private, nonpublic gifts, grants, and endowments may be deposited in the account. A person, as defined in RCW 42.52.010, may not donate, gift, grant, or endow more than five thousand dollars per calendar year to the legislative international trade account. Expenditures from the account may be used only for the purposes of international trade hosting, international relations, and international trade mission activities, excluding travel and lodging, in which the president and members of the senate, members of the house of representatives, and the secretary of state participate in an official capacity. An appropriation is not required for expenditures. All requests by individual legislators for use of funds from this account must be first approved by the secretary of the senate for members of the senate or the chief clerk of the house of representatives for members of the house of representatives. All expenditures from the account shall be authorized by the final signed approval of the chief clerk of the house of representatives, the secretary of the senate, and the president of the senate.

NEW SECTION. Sec. 2. A new section is added to chapter 42.52 RCW to read as follows:

(1) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in section 1 of this act, the president of the senate is presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(2) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in section 1 of this act, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(3) An annual report of the legislative international trade account activities, including a list of receipts and expenditures, shall be published by the president of the senate and submitted to the house of representatives and the senate and be a public record for the purposes of RCW 42.17.260.

Sec. 3. RCW 42.52.150 and 1998 c 7 s 2 are each amended to read as follows:

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this

section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

- (a) Unsolicited flowers, plants, and floral arrangements;
- (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;
- (e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;
- (g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in section 1 of this act;
- (h) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and
- ~~((h))~~ (i) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

- (a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal

beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17 RCW.

Passed by the Senate April 26, 2003.

Passed by the House April 24, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 266

[Engrossed House Bill 1090]

TRAFFICKING—TASK FORCE

AN ACT Relating to the task force against the trafficking of persons; amending 2002 c 10 s 2 (uncodified); adding a new section to chapter 7.68 RCW; and declaring an emergency.

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

Sec. 1. 2002 c 10 s 2 (uncodified) is amended to read as follows:

(1) There is created the Washington state task force against the trafficking of persons.

(2) The task force shall consist of the following members:

(a) The director of the office of community development, or the director's designee;

(b) The secretary of the department of health, or the secretary's designee;

(c) The secretary of the department of social and health services, or the secretary's designee;

(d) The director of the department of labor and industries, or the director's designee;

(e) The commissioner of the employment security department, or the commissioner's designee;

(f) Nine members, selected by the director of the office of community development, that represent public and private sector organizations that provide assistance to persons who are victims of trafficking.

(3) The task force shall be chaired by the director of the office of community development, or the director's designee.

(4) The task force shall carry out the following activities:

(a) Measure and evaluate the progress of the state in trafficking prevention activities;

(b) Identify available federal, state, and local programs that provide services to victims of trafficking that include, but are not limited to health care, human services, housing, education, legal assistance, job training or preparation, interpreting services, English as a second language classes, and victim's compensation; and

(c) Make recommendations on methods to provide a coordinated system of support and assistance to persons who are victims of trafficking.

(5) The task force shall report its supplemental findings and recommendations to the governor and legislature by ~~((November 30, 2002))~~ June 30, 2004.

(6) The office of community development shall provide necessary administrative and clerical support to the task force, within available resources.

(7) The members of the task force shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, within available resources.

(8) The task force expires ~~((March 1, 2003))~~ June 30, 2004.

NEW SECTION. Sec. 2. Section 1 of this act is added to chapter 7.68 RCW.

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 by the House April 21, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 267

[Substitute House Bill 1175]

TRAFFICKING

AN ACT Relating to trafficking persons; amending RCW 9.94A.535, 9A.82.090, 9A.82.100, and 9A.82.120; reenacting and amending RCW 9.94A.515 and 9.94A.515; adding a new section to chapter 9A.40 RCW; prescribing penalties; providing an effective date; 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 9A.40 RCW to read as follows:

(1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor or involuntary servitude; or

(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation under RCW 9.94A.835; or

(C) Result in a death.

(b) Trafficking in the first degree is a class A felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor or involuntary servitude; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a class A felony.

Sec. 2. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 2, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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)
	<u>Trafficking 1 (section 1(I) of this act)</u>
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)
	<u>Trafficking 2 (section 1(2) of this act)</u>

- 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)
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Controlled Substance Homicide (RCW 69.50.415)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 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))
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 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 (when the offender has a criminal history in this state or any other state that includes a sex offense or serious violent offense or the Washington equivalent) (RCW 69.50.401(a)(1)(i))
 - Possession of Ephedrine or any of its Salts or Isomers or Salts of Isomers, Pseudoephedrine or any of its Salts or Isomers or Salts of Isomers, Pressurized Ammonia Gas, or Pressurized Ammonia Gas Solution 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)
- Theft of Ammonia (RCW 69.55.010)
- 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)
- Civil Disorder Training (RCW 9A.48.120)
- 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 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))
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (except when the offender has a criminal history in this state or any other state that includes a sex offense or serious violent offense or the Washington equivalent) (RCW 69.50.401(a)(1)(i))
- 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 9A.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(3)(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)
 - Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(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
74.34.145)

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)

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)

Stalking (RCW 9A.46.110)

Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070(1))

IV Arson 2 (RCW 9A.48.030)

Assault 2 (RCW 9A.36.021)

Assault by Watercraft (RCW
79A.60.060)

Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)

Cheating 1 (RCW 9.46.1961)

Commercial Bribery (RCW 9A.68.060)

Counterfeiting (RCW 9.16.035(4))

Endangerment with a Controlled Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hit and Run—Injury (RCW 46.52.020(4)(b))

Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2)(a))

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, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- 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)
- Identity Theft 2 (RCW 9.35.020(2)(b))

- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief I (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 I (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 2 (RCW 9A.56.070(2))
 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. 3. RCW 9.94A.515 and 2002 c 340 s 2, 2002 c 324 s 2, 2002 c 290 s 7, 2002 c 253 s 4, 2002 c 229 s 2, 2002 c 134 s 2, and 2002 c 133 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)
Trafficking 1 (section 1(1) of this act)
 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)
Trafficking 2 (section 1(2) of this act)

- 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))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))
 - 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)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)

- 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)
- Civil Disorder Training (RCW 9A.48.120)
- 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 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- 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(3)(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))

- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- 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(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- 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 74.34.145)
- 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)
- 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)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW
79A.60.060)
- Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled
Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW
46.52.020(4)(b))
- Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2)(a))
- 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)
- 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, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)
 - 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)
 - Malicious Injury to Railroad Property (RCW 81.60.070)
 - 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))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- 11 Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(2)(b))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- 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)
- Forgery (RCW 9A.60.020)
- Malicious Mischief 2 (RCW 9A.48.080)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.070(2))
- 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. 4. RCW 9.94A.535 and 2002 c 169 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 unless it is imposed on an offender sentenced under RCW 9.94A.712. An exceptional sentence imposed on an offender sentenced under RCW 9.94A.712 shall be to a minimum term set by the court and a maximum term equal to the statutory maximum sentence for the offense of conviction under chapter 9A.20 RCW.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (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.585 (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. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 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, 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.835.

(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.589 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.

(m) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(n) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

Sec. 5. RCW 9A.82.090 and 2001 c 222 s 13 are each amended to read as follows:

During the pendency of any criminal case charging a violation of RCW 9A.82.060 or (~~a violation of RCW~~) 9A.82.080, or an offense defined in section 1 of this act, the superior court may, in addition to its other powers, issue an order pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation of RCW 9A.82.060 or (~~a violation of RCW~~) 9A.82.080, or an offense defined in section 1 of this act, the superior court may, in addition to its other powers of disposition, issue an order pursuant to RCW 9A.82.100.

Sec. 6. RCW 9A.82.100 and 2001 c 222 s 14 are each amended to read as follows:

(1)(a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity, or by an offense defined in section 1 of this act, or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in section 1 of this act, or a violation of RCW 9A.82.060 or 9A.82.080.

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in section 1 of this act, or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering, or an offense defined in section 1 of this act, or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursuant to Title 7 RCW.

In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in section 1 of this act, or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering, or an offense defined in section 1 of this act, activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofitteering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering, or by an offense defined in section 1 of this act, then to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in section 1 of this act, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or antiprofitteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or antiprofitereering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in section 1 of this act, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered or, in the case of an offense that is defined in section 1 of this act, within three years after the final disposition of any criminal charges relating to the offense, whichever is later.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a

pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1)(a) and (b)(i) of this section, either party has the right to a jury trial.

Sec. 7. RCW 9A.82.120 and 2001 c 222 s 16 are each amended to read as follows:

(1) The state, upon filing a criminal action under RCW 9A.82.060 or 9A.82.080 or for an offense defined in section 1 of this act, or a civil action under RCW 9A.82.100, may file in accordance with this section a criminal profiteering lien. A filing fee or other charge is not required for filing a criminal profiteering lien.

(2) A criminal profiteering lien shall be signed by the attorney general or the county prosecuting attorney representing the state in the action and shall set forth the following information:

(a) The name of the defendant whose property or other interests are to be subject to the lien;

(b) In the discretion of the attorney general or county prosecuting attorney filing the lien, any aliases or fictitious names of the defendant named in the lien;

(c) If known to the attorney general or county prosecuting attorney filing the lien, the present residence or principal place of business of the person named in the lien;

(d) A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding;

(e) The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed;

(f) A statement that the notice is being filed pursuant to this section;

(g) The amount that the state claims in the action or, with respect to property or other interests that the state has requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited;

(h) If known to the attorney general or county prosecuting attorney filing the lien, a description of property that is subject to forfeiture to the state or property in which the defendant has an interest that is available to satisfy a judgment entered in favor of the state; and

(i) Such other information as the attorney general or county prosecuting attorney filing the lien deems appropriate.

(3) The attorney general or the county prosecuting attorney filing the lien may amend a lien filed under this section at any time by filing an amended criminal profiteering lien in accordance with this section that identifies the prior lien amended.

(4) The attorney general or the county prosecuting attorney filing the lien shall, as soon as practical after filing a criminal profiteering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a criminal profiteering lien filed in accordance with this section.

(5)(a) A criminal profiteering lien is perfected against interests in personal property in the same manner as a security interest in like property pursuant to RCW (~~62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305, and 62A.9-306~~) 62A.9A-301 through 62A.9A-316 or as otherwise required to perfect a security interest in like property under applicable law. In the case of perfection by filing, the state shall file, in lieu of a financing statement in the form prescribed by RCW (~~62A.9-402~~) 62A.9A-502, a notice of lien in substantially the following form:

NOTICE OF LIEN

Pursuant to RCW 9A.82.120, the state of Washington claims a criminal profiteering lien on all real and personal property of:

Name:

Address:

.....

State of Washington

.....
By (authorized signature)

On receipt of such a notice from the state, a filing officer shall, without payment of filing fee, file and index the notice as if it were a financing statement naming the state as secured party and the defendant as debtor.

(b) A criminal profiteering lien is perfected against interests in real property by filing the lien in the office where a mortgage on the real estate would be filed or recorded. The filing officer shall file and index the criminal profiteering lien, without payment of a filing fee, in the same manner as a mortgage.

(6) The filing of a criminal profiteering lien in accordance with this section creates a lien in favor of the state in:

(a) Any interest of the defendant, in real property situated in the county in which the lien is filed, then maintained, or thereafter acquired in the name of the defendant identified in the lien;

(b) Any interest of the defendant, in personal property situated in this state, then maintained or thereafter acquired in the name of the defendant identified in the lien; and

(c) Any property identified in the lien to the extent of the defendant's interest therein.

(7) The lien created in favor of the state in accordance with this section, when filed or otherwise perfected as provided in subsection (5) of this section, has, with respect to any of the property described in subsection (6) of this section, the same priority determined pursuant to the laws of this state as a mortgage or security interest given for value (but not a purchase money security interest) and perfected in the same manner with respect to such property; except that any lien perfected pursuant to Title 60 RCW by any person who, in the ordinary course of his or her business, furnishes labor, services, or materials, or rents, leases, or otherwise supplies equipment, without knowledge of the criminal profiteering lien, is superior to the criminal profiteering lien.

(8) Upon entry of judgment in favor of the state, the state may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to such other notice as is required by law, give at least thirty days' notice of the execution to any person possessing at the time the notice is given, an interest recorded subsequent to the date the state's lien was perfected.

(9) Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:

(a) In the case of real property or a beneficial interest in real property, relates back to the date of filing the criminal profiteering lien or, if no criminal profiteering lien is filed, then to the date of recording of the final judgment or the abstract thereof; or

(b) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a criminal profiteering lien in accordance with this section, whichever is earlier, but if the property was not seized and no criminal profiteering lien was filed then to the date the final judgment was filed with the department of licensing and, if the personal property is an aircraft, with the federal aviation administration.

(10) This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under RCW 9A.82.100 or appropriate to protect the interests of the state or available under other applicable law.

(11) In a civil or criminal action under this chapter, the superior court shall provide for the protection of bona fide interests in property, including community property, subject to liens of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture pursuant to RCW 9A.82.100(4)(f).

NEW SECTION. Sec. 8. Section 2 of this act expires July 1, 2004.

NEW SECTION. Sec. 9. Section 3 of this act takes effect July 1, 2004.

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 268

[Substitute House Bill 1826]

MATCHMAKING ORGANIZATIONS—PERSONAL HISTORY INFORMATION

AN ACT Relating to trafficking in persons; and amending RCW 19.220.010.

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

Sec. 1. RCW 19.220.010 and 2002 c 115 s 2 are each amended to read as follows:

(1) Each international matchmaking organization doing business in Washington state shall disseminate to a recruit, upon request, state background check information and ~~((marital))~~ personal history information relating to any Washington state resident about whom any information is provided to the recruit, in the recruit's native language. The organization shall notify all recruits that background check and ~~((marital))~~ personal history information is available upon request. The notice that background check and ~~((marital))~~ personal history information is available upon request shall be in the recruit's native language and shall be displayed in a manner that separates it from other information, is highly noticeable, and in lettering not less than one-quarter of an inch high.

(2) If an international matchmaking organization receives a request for information from a recruit pursuant to subsection (1) of this section, the organization shall notify the Washington state resident of the request. Upon receiving notification, the Washington state resident shall obtain from the state patrol and provide to the organization the complete transcript of any background check information provided pursuant to RCW 43.43.760 based on a submission of fingerprint impressions and provided pursuant to RCW 43.43.838 and shall provide to the organization his or her ~~((marital))~~ personal history information. The organization shall require the resident to affirm that ~~((marital))~~ personal history information is complete and accurate ~~((, and includes any information regarding marriages, annulments, and dissolutions which occurred in other states or countries))~~. The organization shall refrain from knowingly providing any further services to the recruit or the Washington state resident in regards to facilitating future interaction between the recruit and the Washington state resident until the organization has obtained the requested information and provided it to the recruit.

(3) This section does not apply to a traditional matchmaking organization of a religious nature that otherwise operates in compliance with the laws of the countries of the recruits of such organization and the laws of the United States nor to any organization that does not charge a fee to any party for the service provided.

(4) As used in this section:

(a) "International matchmaking organization" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and for profit offers to Washington state residents, including aliens lawfully admitted for permanent residence and residing in Washington state, dating, matrimonial, or social referral services involving citizens of a foreign country or countries who are not residing in the United States, by: (i) An exchange of names, telephone numbers, addresses, or statistics; (ii) selection of photographs; or (iii) a social environment provided by the organization in a country other than the United States.

(b) "~~(Marital)~~ Personal history information" means a declaration of the person's current marital status, the number of ~~((times))~~ previous marriages, annulments, and dissolutions for the person ~~((has previously been married))~~, and whether any previous marriages occurred as a result of receiving services from an international matchmaking organization; founded allegations of child abuse or neglect; and any existing orders under chapter 10.14, 10.99, or 26.50 RCW. Personal history information shall include information from the state of Washington and any information from other states or countries.

(c) "Recruit" means a noncitizen, nonresident person, recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services.

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 269

[House Bill 1108]

POLICE HORSES

AN ACT Relating to establishing penalties for harming a police horse; amending RCW 9A.76.200; and prescribing penalties.

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

Sec. 1. RCW 9A.76.200 and 1993 c 180 s 2 are each amended to read as follows:

(1) A person is guilty of harming a police dog ~~((or)),~~ accelerant detection dog, or police horse, if he or she maliciously injures, disables, shoots, or kills by any means any dog or horse that the person knows or has reason to know to be a police dog or accelerant detection dog, as defined in RCW 4.24.410, or police horse, as defined in subsection (2) of this section, whether or not the dog or horse is actually engaged in police or accelerant detection work at the time of the injury.

(2) "Police horse" means any horse used or kept for use by a law enforcement officer in discharging any legal duty or power of his or her office.

(3) Harming a police dog ~~((or)),~~ accelerant detection dog, or police horse is a class C felony.

Passed by the House February 14, 2003.

Passed by the Senate April 23, 2003.

Approved by the Governor May 14, 2003.
Filed in Office of Secretary of State May 14, 2003.

CHAPTER 270

[Substitute Senate Bill 5473]

LAW ENFORCEMENT OFFICERS—TRAINING

AN ACT Relating to providing law enforcement officers with training in interaction with persons with a developmental disability or mental illness; and adding a new section to chapter 43.101 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.101 RCW to read as follows:

(1) The commission must offer a training session on law enforcement interaction with persons with a developmental disability or mental illness. The training must be developed by the commission in consultation with appropriate self advocate and family advocate groups and with appropriate community, local, and state organizations and agencies that have expertise in the area of working with persons with a developmental disability or mental illness. In developing the course, the commission must also examine existing courses certified by the commission that relate to persons with a developmental disability or mental illness.

(2) The training must consist of classroom instruction or internet instruction and shall replicate likely field situations to the maximum extent possible. The training should include, at a minimum, core instruction in all of the following:

(a) The cause and nature of mental illnesses and developmental disabilities;
(b) How to identify indicators of mental illness and developmental disability and how to respond appropriately in a variety of common situations;

(c) Conflict resolution and de-escalation techniques for potentially dangerous situations involving persons with a developmental disability or mental illness;

(d) Appropriate language usage when interacting with persons with a developmental disability or mental illness;

(e) Alternatives to lethal force when interacting with potentially dangerous persons with a developmental disability or mental illness; and

(f) Community and state resources available to serve persons with a developmental disability or mental illness and how these resources can be best used by law enforcement to benefit persons with a developmental disability or mental illness in their communities.

(3) The training shall be made available to law enforcement agencies, through electronic means, for use at their convenience and determined by the internal training needs and resources of each agency.

(4) The commission shall make all reasonable efforts to secure private and nonstate public funds to implement this section.

Passed by the Senate April 21, 2003.

Passed by the House April 9, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 271

[Substitute House Bill 1571]

INMATES—FUNDS—CHILD SUPPORT

AN ACT Relating to enhancing necessary child support payments; amending RCW 72.09.111 and 72.09.480; and creating a new section.

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

***NEW SECTION. Sec. 1.** *The legislature finds that there is an urgent need for vigorous enforcement of child support obligations. The legislature further finds that the duty of child support to provide for the needs of dependent children, including their necessary food, clothing, shelter, education, and health care, should not be avoided because of where an obligor resides. A person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations.*

The legislature also finds the current system of child support collections due from persons confined in state correctional facilities does not facilitate family preservation nor does it promote the best interests of children. Unless otherwise proscribed by federal law or court order, the legislature intends that, particularly in instances of very low payment levels, child support deductions go directly to the person or persons in whose custody the child is and who is responsible for the daily support of the child. The legislature does not intend the child support system to be a mechanism for the support of government, but rather to directly assist children in need of support.

**Sec. 1 was vetoed. See message at end of chapter.*

Sec. 2. RCW 72.09.111 and 2002 c 126 s 2 are each amended to read as follows:

(1) The secretary shall deduct from the gross wages or gratuities of each inmate working in correctional industries work programs, taxes and legal financial obligations. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages and gratuities.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration; ~~((and))~~

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

~~(c) ((The formula shall include the following minimum deduction from class IV gross gratuities: Five percent to the department to contribute to the cost of incarceration.~~

~~(d))~~ The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the purpose of crime victims' compensation; and

(ii) Fifteen percent for any child support owed under a support order.

(d) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under (a)(ii) or (b)(ii) of this subsection.

The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the time of his or her release from confinement, unless the secretary determines that an emergency exists for the inmate, at which time the funds can be made available to the inmate in an amount determined by the secretary. The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

In the event that the offender worker's wages or gratuity is subject to garnishment for support enforcement, the crime victims' compensation, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(2) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(3) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(4) The expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(a) Not later than June 30, 1995, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(b) Not later than June 30, 1996, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(c) Not later than June 30, 1997, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(d) Not later than June 30, 1998, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(e) Not later than June 30, 1999, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(f) Not later than June 30, 2000, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994.

(5) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(6) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

Sec. 3. RCW 72.09.480 and 1999 c 325 s 1 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsection ~~((6))~~ (7) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be

subject to the following deductions (~~(in RCW 72.09.111(1)(a))~~) and the priorities established in chapter 72.11 RCW:

(a) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent to the department to contribute to the cost of incarceration;

(d) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(e) Fifteen percent for any child support owed under a support order.

(3) When an inmate, except as provided in subsection (7) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

~~((3))~~ (4) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

~~((4))~~ (5) The deductions required under subsection (2) of this section shall not apply to funds received by the department on behalf of an offender for payment of one fee-based education or vocational program that is associated with an inmate's work program or a placement decision made by the department under RCW 72.09.460 to prepare an inmate for work upon release.

An inmate may, prior to the completion of the fee-based education or vocational program authorized under this subsection, apply to a person designated by the secretary for permission to make a change in his or her program. The secretary, or his or her designee, may approve the application based solely on the following criteria: (a) The inmate has been transferred to another institution by the department for reasons unrelated to education or a change to a higher security classification and the offender's current program is unavailable in the offender's new placement; (b) the inmate entered an academic program as an undeclared major and wishes to declare a major. No inmate may apply for more than one change to his or her major and receive the exemption from deductions specified in this subsection; (c) the educational or vocational institution is terminating the inmate's current program; or (d) the offender's training or education has demonstrated that the current program is not the appropriate program to assist the offender to achieve a placement decision made by the department under RCW 72.09.460 to prepare the inmate for work upon release.

~~((5))~~ (6) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

~~((6))~~ (7) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives

any funds in addition to his or her gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation (~~and~~), twenty percent to the department to contribute to the cost of incarceration, and fifteen percent to child support payments.

~~((7))~~ (8) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds from a settlement or award resulting from a legal action in addition to his or her gratuities, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation and twenty percent to the department to contribute to the cost of incarceration.

(9) The interest earned on an inmate savings account created as a result of the plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(10) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action.

Passed by the House April 25, 2003.

Passed by the Senate April 25, 2003.

Approved by the Governor May 14, 2003, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 14, 2003.

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

"I am returning herewith, without my approval as to section 1, Substitute House Bill No. 1571 entitled:

"AN ACT Relating to enhancing necessary child support payments:"

This bill enhances child support collections from inmates. I am pleased to enact a law that will ease collections from incarcerated persons. Parents in prison should not be relieved of their obligation to support their children.

However, the intent section of this bill is overly broad and the language is inappropriate for Revised Code of Washington (RCW), Chapter 72, State Institutions. Amendments to alter the purpose and uses of the child support collection system should be made to the child support chapters, 26.23 RCW, 74.20 RCW, or 74.20A RCW.

For these reasons, I have vetoed section 1 of Substitute House Bill No. 1571.

With the exception of section 1, Substitute House Bill No. 1571 is approved."

CHAPTER 272

[House Bill 1727]

DEATH CERTIFICATES—SEX OFFENDERS

AN ACT Relating to death certificates of sex offenders supplied to law enforcement agencies; and amending RCW 70.58.107.

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

Sec. 1. RCW 70.58.107 and 1997 c 223 s 1 are each amended to read as follows:

The department of health shall charge a fee of thirteen dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration. No fee may be demanded or required for furnishing certified copies of a death certificate of a sex offender for use by a law enforcement agency in maintaining a registered sex offender data base.

The department shall keep a true and correct account of all fees received and ~~((turn))~~ transmit the fees ~~((over))~~ to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation, except that local registrars shall charge thirteen dollars for the first copy of a death certificate and eight dollars for each additional copy of the same death certificate when the additional copies are ordered at the same time as the first copy. All such fees collected, except for five dollars of each fee for the issuance of a certified copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall ~~((turn))~~ transmit five dollars of the fee ~~((over))~~ to the state treasurer on or before the first day of January, April, July, and October.

Five dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations' account established by RCW 43.79.445.

Passed by the House March 13, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 273

[Substitute Senate Bill 5039]

HEPATITIS C

AN ACT Relating to hepatitis C; amending RCW 49.60.172 and 49.60.174; adding a new section to chapter 70.54 RCW; adding a new section to chapter 50.20 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.** A new section is added to chapter 70.54 RCW to read as follows:

(1) The secretary of health shall design a state plan for education efforts concerning hepatitis C and the prevention and management of the disease by January 1, 2004. In developing the plan, the secretary shall consult with:

(a) The public;

- (b) Patient groups and organizations;
- (c) Relevant state agencies that have functions that involve hepatitis C or provide services to persons with hepatitis C;
- (d) Local health departments;
- (e) Public health and clinical laboratories;
- (f) Providers and suppliers of services to persons with hepatitis C;
- (g) Research scientists;
- (h) The University of Washington; and
- (i) Relevant health care associations.

(2) The plan shall include implementation recommendations in the following areas:

(a) Hepatitis C virus prevention and treatment strategies for groups at risk for hepatitis C with an emphasis towards those groups that are disproportionately affected by hepatitis C, including persons infected with HIV, veterans, racial or ethnic minorities that suffer a higher incidence of hepatitis C, and persons who engage in high-risk behavior, such as intravenous drug use;

(b) Educational programs to promote public awareness about hepatitis C and knowledge about risk factors, the value of early detection, screening, services, and available treatment options for hepatitis C, which may be incorporated in public awareness programs concerning bloodborne infections;

(c) Education curricula for appropriate health and health-related providers covered by the uniform disciplinary act, chapter 18.130 RCW;

(d) Training courses for persons providing hepatitis C counseling, public health clinic staff, and any other appropriate provider, which shall focus on disease prevention, early detection, and intervention;

(e) Capacity for voluntary hepatitis C testing programs to be performed at facilities providing voluntary HIV testing under chapter 70.24 RCW;

(f) A comprehensive model for an evidence-based process for the prevention and management of hepatitis C that is applicable to other diseases; and

(g) Sources and availability of funding to implement the plan.

(3) The secretary of health shall develop the state plan described in subsections (1) and (2) of this section only to the extent that, and for as long as, federal or private funds are available for that purpose, including grants. Funding for this act shall not come from state sources.

(4) The board of health may adopt rules necessary to implement subsection (2)(b) of this section.

(5) The secretary of health shall submit the completed state plan to the legislature by January 1, 2004. After the initial state plan is submitted, the department shall update the state plan biennially and shall submit the plan to the governor and make it available to other interested parties. The update and progress reports are due December 1, 2004, and every two years thereafter.

(6) The state plan recommendations described in subsection (2)(b) of this section shall be implemented by the secretary of health only to the extent that, and for as long as, federal or private funds are available for that purpose, including grants.

(7) This section expires June 30, 2007.

Sec. 2. RCW 49.60.172 and 1988 c 206 s 903 are each amended to read as follows:

(1) No person may require an individual to take an HIV test, as defined in chapter 70.24 RCW, or hepatitis C test, as a condition of hiring, promotion, or continued employment unless the absence of HIV or hepatitis C infection is a bona fide occupational qualification for the job in question.

(2) No person may discharge or fail or refuse to hire any individual, or segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the results of an HIV test or hepatitis C test unless the absence of HIV or hepatitis C infection is a bona fide occupational qualification of the job in question.

(3) The absence of HIV or hepatitis C infection as a bona fide occupational qualification exists when performance of a particular job can be shown to present a significant risk, as defined by the board of health by rule, of transmitting HIV or hepatitis C infection to other persons, and there exists no means of eliminating the risk by restructuring the job.

(4) For the purpose of this chapter, any person who is actually infected with HIV or hepatitis C, but is not disabled as a result of the infection, shall not be eligible for any benefits under the affirmative action provisions of chapter 49.74 RCW solely on the basis of such infection.

(5) Employers are immune from civil action for damages arising out of transmission of HIV or hepatitis C to employees or to members of the public unless such transmission occurs as a result of the employer's gross negligence.

Sec. 3. RCW 49.60.174 and 1997 c 271 s 6 are each amended to read as follows:

(1) For the purposes of determining whether an unfair practice under this chapter has occurred, claims of discrimination based on actual or perceived HIV or hepatitis C infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a disabled person.

(2) Subsection (1) of this section shall not apply to transactions with insurance entities, health service contractors, or health maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178 to prohibit fair discrimination on the basis of actual HIV or actual hepatitis C infection status when bona fide statistical differences in risk or exposure have been substantiated.

(3) For the purposes of this chapter(,):

(a) "HIV" means the human immunodeficiency virus, and includes all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the infected person immunodeficient; and

(b) "Hepatitis C" means the hepatitis C virus of any genotype.

NEW SECTION. Sec. 4. A new section is added to chapter 50.20 RCW to read as follows:

(1) Credentialed health care professionals listed in RCW 18.130.040 shall be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043 if they are unemployed as a result of contracting hepatitis C in the course of employment and are unable to continue to work in

their profession because of a significant risk that such work would pose to other persons and that risk cannot be eliminated.

(2) For purposes of subsection (1) of this section, a health care professional who was employed on a full-time basis in their profession shall be presumed to have contracted hepatitis C in the course of employment. This presumption may be rebutted by a preponderance of the evidence that demonstrates that the health care professional contracted hepatitis C as a result of activities or circumstances not related to employment.

NEW SECTION. Sec. 5. Section 1 of this act does not create a private right of action.

Passed by the Senate April 27, 2003.

Passed by the House April 23, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 274

[Substitute House Bill 1275]

HIV INSURANCE PROGRAM

AN ACT Relating to the human immunodeficiency virus insurance program; adding a new section to chapter 43.70 RCW; creating a new section; repealing RCW 74.09.757; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. RCW 74.09.757 (Acquired human immunodeficiency syndrome insurance program (HIV/AIDS)) and 1993 c 264 s 1 & 1989 c 260 s 3 are each repealed.

NEW SECTION. Sec. 2. A new section is added to chapter 43.70 RCW to read as follows:

(1) "Human immunodeficiency virus insurance program," as used in this section, means a program that provides health insurance coverage for individuals with human immunodeficiency virus, as defined in RCW 70.24.017(7), who are not eligible for medical assistance programs from the department of social and health services as defined in RCW 74.09.010(8) and meet eligibility requirements established by the department of health.

(2) The department of health may pay for health insurance coverage on behalf of persons with human immunodeficiency virus, who meet department eligibility requirements, and who are eligible for "continuation coverage" as provided by the federal consolidated omnibus budget reconciliation act of 1985, group health insurance policies, or individual policies. The number of insurance policies supported by this program in the Washington state health insurance pool as defined in RCW 48.41.030(18) shall not grow beyond the July 1, 2003, level.

NEW SECTION. Sec. 3. The department of health shall adopt rules to implement this act.

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 July 1, 2003.

Passed by the House March 11, 2003.

Passed by the Senate April 17, 2003.
Approved by the Governor May 14, 2003.
Filed in Office of Secretary of State May 14, 2003.

CHAPTER 275

[House Bill 1296]

DEPARTMENT OF HEALTH—LICENSING

AN ACT Relating to making corrections to the department of health's professional and facilities licensing provisions; amending RCW 18.71.040 and 70.127.040; reenacting and amending RCW 18.130.040; repealing RCW 69.41.270; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 18.71.040 and 1991 c 3 s 160 are each amended to read as follows:

Every applicant for a (~~certificate~~) license to practice medicine and surgery shall pay a fee determined by the secretary as provided in RCW 43.70.250.

Sec. 2. RCW 18.130.040 and 2002 c 223 s 6 and 2002 c 216 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW; and

(xxii) Recreational therapists.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 3. RCW 70.127.040 and 2000 c 175 s 4 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) A person who provides only meal services in an individual's permanent or temporary residence;
- (3) 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 or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;
- (5) A person who provides services through a contract with a licensed agency;
- (6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;
- (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 ((71A.12)) 71A.12 RCW, other entities licensed under chapter ((71A.12)) 71A.12 RCW, or other licensed facilities and institutions, only when providing services to persons residing within the facility or institution;
- (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, infirm, or vulnerable individuals through a contract with the department of social and health services;
- (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;
- (11) In-home assessments of an ill, disabled, vulnerable, or infirm individual that does not result in regular ongoing care at home;
- (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;
- (13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;
- (14) A person providing case management 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;
- (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.

NEW SECTION. Sec. 4. Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003.

NEW SECTION. Sec. 5. RCW 69.41.270 (Maintenance of records—Inspection by board) and 1989 c 352 s 5 are each repealed.

Passed by the House February 10, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 276

[Engrossed Substitute House Bill 1299]

HEALTH SERVICES PURCHASING

AN ACT Relating to evidence-based health services purchasing by state purchased health care programs; adding a new section to chapter 41.05 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 41.05 RCW to read as follows:

(1) The authority shall coordinate state agency efforts to develop and implement uniform policies across state purchased health care programs that will ensure prudent, cost-effective health services purchasing, maximize efficiencies in administration of state purchased health care programs, improve the quality of care provided through state purchased health care programs, and reduce administrative burdens on health care providers participating in state purchased health care programs. The policies adopted should be based, to the extent possible, upon the best available scientific and medical evidence and shall endeavor to address:

(a) Methods of formal assessment, such as health technology assessment. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board;

(b) Monitoring of health outcomes, adverse events, quality, and cost-effectiveness of health services;

(c) Development of a common definition of medical necessity; and

(d) Exploration of common strategies for disease management and demand management programs.

(2) The administrator may invite health care provider organizations, carriers, other health care purchasers, and consumers to participate in efforts undertaken under this section.

(3) For the purposes of this section "best available scientific and medical evidence" means the best available external clinical evidence derived from systematic research.

NEW SECTION. Sec. 2. Agencies administering state purchased health care programs shall cooperatively adopt rules necessary to implement this act.

Passed by the House March 18, 2003.

Passed by the Senate April 15, 2003.
Approved by the Governor May 14, 2003.
Filed in Office of Secretary of State May 14, 2003.

CHAPTER 277

[House Bill 1444]

PUBLIC DISCLOSURE—HEALTH SERVICES PURCHASING INFORMATION

AN ACT Relating to protection of proprietary or confidential information acquired through state health services purchasing; amending RCW 42.30.110 and 41.05.026; and reenacting and amending RCW 42.17.310.

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

Sec. 1. RCW 42.30.110 and 2001 c 216 s 1 are each amended to read as follows:

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a) To consider matters affecting national security;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body,

or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(A) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(B) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(C) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

Sec. 2. RCW 41.05.026 and 1991 c 79 s 1 are each amended to read as follows:

(1) When soliciting proposals for the purpose of awarding contracts for goods or services, the administrator shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) When soliciting information for the development, acquisition, or implementation of state purchased health care services, the administrator shall, upon written request by the respondent, exempt from public inspection and copying such proprietary data, trade secrets, or other information submitted by the respondent that relate to the respondent's unique methods of conducting business, data unique to the product or services of the respondent, or to determining prices or rates to be charged for services.

(3) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request of the administrator ~~((or)), board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter~~ by a contracting insurer, health care service contractor, health maintenance organization, ~~((or)) vendor, or other health services organization~~ may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

~~((3))~~ (4) The board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter, may hold an executive session in accordance with chapter 42.30 RCW during any regular or special meeting to discuss information submitted in accordance with subsections (1) ~~((or (2)))~~ through (3) of this section.

(5) A person who challenges a request for or designation of information as exempt under this section is entitled to seek judicial review pursuant to chapter 42.17 RCW.

Sec. 3. RCW 42.17.310 and 2002 c 335 s 1, 2002 c 224 s 2, 2002 c 205 s 4, and 2002 c 172 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 or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(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 18.130.040 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 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).

(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.

(uu) 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.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher

providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(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 by the House April 23, 2003.

Passed by the Senate April 15, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 278

[Engrossed Substitute House Bill 1852]

HEALTH CARE PERSONNEL SHORTAGE

AN ACT Relating to facilitating collaboration among health care work force stakeholders to address the health care personnel shortage; amending RCW 28B.115.070 and 28B.115.090; adding a new section to chapter 28C.18 RCW; creating a new section; and repealing RCW 28B.125.005, 28B.125.010, 28B.125.020, and 28B.125.030.

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

NEW SECTION. Sec. 1. The legislature finds and declares:

- (1) There is a severe shortage of health care personnel in Washington state;
- (2) The shortage contributes to increased costs in health care and threatens the ability of the health care system to provide adequate and accessible services;
- (3) The current shortage of health care personnel is structural rather than the cyclical shortages of the past, and this is due to demographic changes that will increase demand for health care services;
- (4) An increasing proportion of the population will reach retirement age, and an increasing proportion of health care personnel will also reach retirement age; and
- (5) There should be continuing collaboration among health care work force stakeholders to address the shortage of health care personnel.

NEW SECTION. Sec. 2. A new section is added to chapter 28C.18 RCW to read as follows:

The board shall:

- (1) Facilitate ongoing collaboration among stakeholders in order to address the health care personnel shortage;
- (2) In collaboration with stakeholders, establish and maintain a state strategic plan for ensuring an adequate supply of health care personnel that safeguards the ability of the health care delivery system in Washington state to provide quality, accessible health care to residents of Washington; and
- (3) Report to the governor and legislature by December 31, 2003, and annually thereafter, on progress on the state plan and make additional recommendations as necessary.

Sec. 3. RCW 28B.115.070 and 1991 c 332 s 20 are each amended to read as follows:

After June 1, 1992, the department, in consultation with the board and the department of social and health services, shall:

- (1) Determine eligible credentialed health care professions for the purposes of the loan repayment and scholarship program authorized by this chapter. Eligibility shall be based upon an assessment that determines that there is a

shortage or insufficient availability of a credentialed profession so as to jeopardize patient care and pose a threat to the public health and safety. The department shall consider the relative degree of shortages among professions when determining eligibility. ~~((This determination shall be based upon health professional shortage needs identified in the health personnel resource plan authorized by RCW 28B.125.010.))~~ The department may add or remove professions from eligibility based upon the determination that a profession is no longer in shortage ~~((as determined by the health personnel resource plan)).~~ Should a profession no longer be eligible, participants or eligible students who have received scholarships shall be eligible to continue to receive scholarships or loan repayments until they are no longer eligible or until their service obligation has been completed;

(2) Determine health professional shortage areas for each of the eligible credentialed health care professions.

Sec. 4. RCW 28B.115.090 and 1991 c 332 s 22 are each amended to read as follows:

(1) The board may grant loan repayment and scholarship awards to eligible participants from the funds appropriated for this purpose, or from any private or public funds given to the board for this purpose. Participants are ineligible to receive loan repayment if they have received a scholarship from programs authorized under this chapter or chapter ~~((28B.104 or))~~ 70.180 RCW or are ineligible to receive a scholarship if they have received loan repayment authorized under this chapter or chapter ~~((18.150))~~ 28B.115 RCW.

(2) Funds appropriated for the program, including reasonable administrative costs, may be used by the board for the purposes of loan repayments or scholarships. The board shall annually establish the total amount of funding to be awarded for loan repayments and scholarships and such allocations shall be established based upon the best utilization of funding for that year ~~((and based upon the health personnel resource plan authorized in RCW 28B.125.010)).~~

(3) One portion of the funding appropriated for the program shall be used by the board as a recruitment incentive for communities participating in the community-based recruitment and retention program as authorized by chapter 70.185 RCW; one portion of the funding shall be used by the board as a recruitment incentive for recruitment activities in state-operated institutions, county public health departments and districts, county human service agencies, federal and state contracted community health clinics, and other health care facilities, such as rural hospitals that have been identified by the department, as providing substantial amounts of charity care or publicly subsidized health care; one portion of the funding shall be used by the board for all other awards. The board shall determine the amount of total funding to be distributed between the three portions.

NEW SECTION. Sec. 5. The following acts or parts of acts are each repealed:

- (1) RCW 28B.125.005 (Intent) and 1991 c 332 s 4;
- (2) RCW 28B.125.010 (Statewide health personnel resource plan—Committee) and 1998 c 245 s 15, 1993 c 492 s 270, & 1991 c 332 s 5;
- (3) RCW 28B.125.020 (Institutional plans—Implementation) and 1991 sp.s. c 27 s 1; and

(4) RCW 28B.125.030 (New training programs) and 1993 c 323 s 5.

Passed by the House March 13, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 279

[House Bill 1621]

MEDICAID PERSONAL CARE PLANS—NURSE REVIEW

AN ACT Relating to modification of the mandatory nurse review of medicaid personal care plans; and amending RCW 74.09.520.

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

Sec. 1. RCW 74.09.520 and 1998 c 245 s 145 are each amended to read as follows:

(1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care ((must)) for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This definition may include clients that meet indicators or protocols for review, consultation, or visit.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

(6) For Title XIX personal care services administered by aging and adult services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW ((74.39A.008)) 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW ((74.39A.008)) 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(7) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract to provide these services, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

Passed by the House March 11, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 280

[Substitute House Bill 1694]

BOARDING HOMES—INSPECTIONS

AN ACT Relating to the timing of the inspection of boarding homes; and amending RCW 18.20.110.

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

Sec. 1. RCW 18.20.110 and 2000 c 47 s 4 are each amended to read as follows:

The department shall make or cause to be made, at least ~~((a-yearly))~~ every eighteen months with an annual average of fifteen months, an inspection and

investigation of all boarding homes. However, the department may delay an inspection to twenty-four months if the boarding home has had three consecutive inspections with no written notice of violations and has received no written notice of violations resulting from complaint investigation during that same time period. The department may at anytime make an unannounced inspection of a licensed home to assure that the licensee is in compliance with this chapter and the rules adopted under this chapter. 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 adopted hereunder shall be given to the applicant or licensee and the department. The department may prescribe by 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 agencies responsible for plan reviews for preliminary inspection and approval or recommendations with respect to compliance with the rules and standards herein authorized.

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

CHAPTER 281

[Second Substitute House Bill 1784]

MENTAL HEALTH SERVICES—CHILDREN

AN ACT Relating to improving coordination of services for children's mental health; amending RCW 71.36.020; adding new sections to chapter 71.36 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature affirms its support for: Improving field-level cross-program collaboration and efficiency; collecting reliable mental health cost, service, and outcome data specific to children; revising the early periodic screening diagnosis and treatment plan to reflect the current mental health system structure; and identifying and promulgating the approaches used in school districts where mental health and education systems coordinate services and resources to provide public mental health care for children.

NEW SECTION. Sec. 2. A new section is added to chapter 71.36 RCW to read as follows:

(1) The legislature supports recommendations made in the August 2002 study of the public mental health system for children conducted by the joint legislative audit and review committee.

(2) The department shall, within available funds:

(a) Identify internal business operation issues that limit the agency's ability to meet legislative intent to coordinate existing categorical children's mental health programs and funding;

(b) Collect reliable mental health cost, service, and outcome data specific to children. This information must be used to identify best practices and methods of improving fiscal management;

(c) Revise the early periodic screening diagnosis and treatment plan to reflect the mental health system structure in place on the effective date of this section and thereafter revise the plan as necessary to conform to subsequent changes in the structure.

(3) The department and the office of the superintendent of public instruction shall jointly identify school districts where mental health and education systems coordinate services and resources to provide public mental health care for children. The department and the office of the superintendent of public instruction shall work together to share information about these approaches with other school districts, regional support networks, and state agencies.

NEW SECTION. Sec. 3. A new section is added to chapter 71.36 RCW to read as follows:

(1) In addition to any follow-up requirements recommended by the joint legislative audit and review committee, the department of social and health services shall submit a report to the governor and the legislature on the status of the implementation of the recommendations provided in section 2(2) (a) through (c) of this act and, in coordination with the office of the superintendent of public instruction, on section 2(3) of this act. An initial implementation status report must be submitted to the governor and appropriate policy and fiscal committees of the legislature by June 1, 2004. A final report shall be provided no later than June 1, 2006.

(2) This section expires June 30, 2006.

Sec. 4. RCW 71.36.020 and 1991 c 326 s 13 are each amended to read as follows:

~~((1) The office of financial management shall provide the following information to the appropriate committees of the legislature on or before December 1, 1991, and update such information biennially thereafter:~~

~~(a) An inventory of state and federally funded programs providing mental health services to children in Washington state. For purposes of the inventory, "children's mental health services" shall be broadly construed to include services related to children's mental health provided through education, children and family services, juvenile justice, mental health, health care, alcohol and substance abuse, and developmental disabilities programs, such as: The primary intervention program; treatment foster care; the fair start program; therapeutic child care and day treatment for children in the child protective services system, as provided in RCW 74.14B.040; family reconciliation services counseling, as provided in chapter 13.32A RCW; the community mental health services act, as provided in chapter 71.24 RCW; mental health services for minors, as provided in chapter 71.34 RCW; mental health services provided by the medical assistance program, limited casualty program for the medically needy and children's health program, as provided in chapter 74.09 RCW; counseling for delinquent children, as provided in RCW 72.05.170; mental health service provided by child welfare services, as provided in chapter 74.13 RCW; and services to emotionally disturbed and mentally ill children, as provided in chapter 74.14A RCW.~~

~~(b) For each program or service inventoried pursuant to (a) of this subsection:~~

~~(i) Statutory authority;~~

~~(ii) Level and source of funding statewide and for each county and school district in the state during the biennium ending June 30, 1991, to the extent such information is available;~~

~~(iii) Agency administering the service statewide and description of how administration and service delivery are organized and provided at the regional and local level;~~

~~(iv) Programmatic or financial eligibility criteria;~~

~~(v) Characteristics of, and number of children served statewide and in each county and school district during the biennium ending June 30, 1991, to the extent such information is available;~~

~~(vi) Number of children of color served, by race and nationality, and number and type of minority mental health providers, by race and nationality, in each regional support network area, to the extent such information is available; and~~

~~(vii) Statutory changes necessary to remove categorical restrictions in the program or service, including federal statutory or regulatory changes.~~

(2)) The department, in consultation with the office of financial management, ((in consultation with the department,)) shall develop a plan and criteria for the use of early periodic screening, diagnosis, and treatment services related to mental health that includes at least the following components:

~~((a))~~ (1) Criteria for screening and assessment of mental illness and emotional disturbance;

~~((b))~~ (2) Criteria for determining the appropriate level of medically necessary services a child receives, including but not limited to development of a multidisciplinary plan of care when appropriate, and prior authorization for receipt of mental health services;

~~((c))~~ (3) Qualifications for children’s mental health providers;

~~((d))~~ (4) Other cost control mechanisms, such as managed care arrangements and prospective or capitated payments for mental health services; and

~~((e))~~ (5) Mechanisms to ensure that federal medicaid matching funds are obtained for services ~~((inventoried pursuant to subsection (1) of this section)),~~ to the greatest extent practicable.

In developing the plan, the ~~((office of financial management))~~ department shall provide an opportunity for comment by the major child-serving systems and regional support networks. The plan shall be submitted to appropriate committees of the legislature on or before December 1, ~~((1991))~~ 2003.

Passed by the House April 23, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.

AUTHENTICATION

I, Dennis W. Cooper, Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 2003 regular session (58th Legislature), chapters 1 through 281, respectively, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 14th day of July, 2003.

A handwritten signature in black ink that reads "Dennis W. Cooper". The signature is written in a cursive style with a large initial "D" and "C".

DENNIS W. COOPER
Code Reviser

