

**FIFTY SECOND DAY**

**MORNING SESSION**

February 28, 2012

Senate Chamber, Olympia, Wednesday, February 29, 2012

The Senate was called to order at 9:30 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Brown, Pflug and Schoesler.

The Sergeant at Arms Color Guard consisting of Pages Alexander Ludeman and Josiah Sakas, presented the Colors. Bishop Eusebio Elizondo of the Archdiocese of Seattle of the Catholic Church offered the prayer.

**MOTION**

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

**MOTION**

On motion of Senator Eide, the Senate advanced to the third order of business.

**MESSAGE FROM THE GOVERNOR  
GUBERNATORIAL APPOINTMENTS**

February 28, 2012

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

I have the honor to submit the following appointment, subject to your confirmation.

MARK RICHARD, appointed February 10, 2012, for the term ending August 2, 2012, as Member of the Sentencing Guidelines Commission.

Sincerely,

CHRISTINE O. GREGOIRE, Governor

Referred to Committee on Judiciary.

**MOTION**

On motion of Senator Eide, the appointee listed on the Gubernatorial Appointment report was referred to the committee as designated.

**MOTION**

On motion of Senator Eide, the Senate advanced to the fourth order of business.

**MESSAGE FROM THE HOUSE**

February 28, 2012

MR. PRESIDENT:

The House has passed:

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2373.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

**MESSAGE FROM THE HOUSE**

MR. PRESIDENT:

The House has passed:

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5292,

SUBSTITUTE SENATE BILL NO. 5631,

SENATE BILL NO. 6157,

SENATE BILL NO. 6175,

SUBSTITUTE SENATE BILL NO. 6187,

ENGROSSED SENATE BILL NO. 6296,

SENATE BILL NO. 6385,

SUBSTITUTE SENATE BILL NO. 6423,

SENATE BILL NO. 6465,

SUBSTITUTE SENATE BILL NO. 6472.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

**MESSAGE FROM THE HOUSE**

February 28, 2012

MR. PRESIDENT:

The House has passed:

ENGROSSED SUBSTITUTE SENATE BILL NO. 5575,

SENATE BILL NO. 6133.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

**MOTION**

On motion of Senator Eide, Senate Rule 20 was suspended for the remainder of the day to allow consideration of additional floor resolutions.

EDITOR'S NOTE: Senate Rule 20 limits consideration of floor resolutions not essential to the operation of the Senate to one per day during regular daily sessions.

**MOTION**

On motion of Senator Eide, the Senate advanced to the sixth order of business.

**SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS**

**MOTION**

Senator King moved that Gubernatorial Appointment No. 9140, Elizabeth Bloomfield, as a member of the Recreation and Conservation Funding Board, be confirmed.

Senator King spoke in favor of the motion.

**APPOINTMENT OF ELIZABETH BLOOMFIELD**

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9140, Elizabeth Bloomfield as a member of the Recreation and Conservation Funding Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9140, Elizabeth Bloomfield as a member of the Recreation and Conservation Funding Board and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 4; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Sheldon, Shin, Stevens, Swecker and Tom

Absent: Senators Brown, Pflug, Schoesler and Zarelli

Gubernatorial Appointment No. 9140, Elizabeth Bloomfield, having received the constitutional majority was declared confirmed as a member of the Recreation and Conservation Funding Board.

#### MOTION

On motion of Senator Ranker, Senators Brown, Hatfield, Haugen, Hobbs, Kastama and Keiser were excused.

#### MOTION

On motion of Senator Ericksen, Senators Pflug and Zarelli were excused.

#### SECOND READING

#### CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

#### MOTION

Senator Fraser moved that Gubernatorial Appointment No. 9194, Billy Frank, Jr., as a member of the Puget Sound Partnership, be confirmed.

Senator Fraser spoke in favor of the motion.

#### APPOINTMENT OF BILLY FRANK, JR.

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9194, Billy Frank, Jr. as a member of the Puget Sound Partnership.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9194, Billy Frank, Jr. as a member of the Puget Sound Partnership and the appointment was confirmed by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Keiser

Gubernatorial Appointment No. 9194, Billy Frank, Jr., having received the constitutional majority was declared confirmed as a member of the Puget Sound Partnership.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2664, by House Committee on Technology, Energy & Communications (originally sponsored by Representative Morris)

Concerning the voluntary option to purchase qualified energy resources.

The measure was read the second time.

#### MOTION

On motion of Senator Ranker, the rules were suspended, Engrossed Substitute House Bill No. 2664 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Ranker and Morton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2664.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2664 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Ericksen

Excused: Senator Keiser

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2664, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### INTRODUCTION OF SPECIAL GUEST

The President welcomed and introduced Miss Ellie Lewis, great niece of former Harry Lewis, who was serving as a Senate Page and seated at the rostrum.

#### MOTION

On motion of Senator Ericksen, Senator Stevens was excused.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2352, by House Committee on Higher Education (originally sponsored by Representatives Reykdal, Fitzgibbon, Zeiger, Kenney, Maxwell, Haler, Green, Jinkins, Sells, Moscoso, Ormsby, Pollet, Billig, Anderson, Probst, Lytton, Wylie, Ladenburg, Kelley, Angel and Hunt)

Concerning institutions of higher education services and activities fees.

The measure was read the second time.

FIFTY SECOND DAY, FEBRUARY 29, 2012

2012 REGULAR SESSION

MOTION

On motion of Senator Tom, the rules were suspended, Substitute House Bill No. 2352 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Tom and Hill spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2352.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2352 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Keiser

SUBSTITUTE HOUSE BILL NO. 2352, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2651, by Representatives Springer, Chandler, Blake, Upthegrove and Wilcox

Changing the numeric limit for bacterial contamination for industrial storm water permittees with discharges to water bodies listed as impaired to a narrative limit.

The measure was read the second time.

MOTION

On motion of Senator Nelson, the rules were suspended, House Bill No. 2651 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Nelson and Ericksen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2651.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2651 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala,

Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Keiser

HOUSE BILL NO. 2651, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2181, by House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Dammeier, Orwall, Bailey, Finn, McCune, Sullivan, Klippert, Hudgins, Hope, Hunt, Taylor, Jinkins, Ladenburg, Hansen, Ryu, Maxwell, Asay, Kelley, Kenney, Hurst and Shea)

Extending the age for service in the Washington state guard.

The measure was read the second time.

MOTION

On motion of Senator Pridemore, the rules were suspended, Substitute House Bill No. 2181 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Pridemore and Swecker spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2181.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2181 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Keiser

SUBSTITUTE HOUSE BILL NO. 2181, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2384, by House Committee on Business & Financial Services (originally sponsored by Representatives Hudgins, Bailey, Kirby, Condotta, Pedersen, Ryu, Fitzgibbon, Moscoso, Stanford, Upthegrove, Billig, Liias and Ladenburg)

Regulating personal vehicle sharing programs.

The measure was read the second time.

MOTION

On motion of Senator Hobbs, the rules were suspended, Engrossed Substitute House Bill No. 2384 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hobbs spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2384.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2384 and the bill passed the Senate by the following vote: Yeas, 44; Nays, 4; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist Newbry, Padden, Schoesler and Stevens

Excused: Senator Keiser

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2384, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2393, by Representatives Rodne, Pedersen, Moscoso and Condotta

Concerning employer reporting to the state support registry.

The measure was read the second time.

#### MOTION

On motion of Senator Regala, the rules were suspended, House Bill No. 2393 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Regala spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2393.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2393 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

HOUSE BILL NO. 2393, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Harper, Senator Ranker was excused.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2341, by House Committee on Health Care & Wellness (originally sponsored by Representatives Jinkins, Cody, Ladenburg, Van De Wege, Green, Reykdal, Moeller, Tharinger, McCoy, Darneille and Hunt)

Concerning community benefits provided by hospitals.

The measure was read the second time.

#### MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute House Bill No. 2341 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2341.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2341 and the bill passed the Senate by the following vote: Yeas, 42; Nays, 6; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Baumgartner, Ericksen, Holmquist Newbry, Honeyford, Padden and Stevens

Excused: Senator Ranker

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2341, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

At 10:37 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:47 a.m. by President Owen.

#### MOTION

On motion of Senator Eide, the Senate advanced to the eighth order of business.

#### MOTION

Senator McAuliffe moved adoption of the following resolution:

SENATE RESOLUTION  
8688

By Senators McAuliffe and Hobbs

WHEREAS, Brigadoon Service Dogs was founded in August of 2004, to be a nonprofit organization dedicated to pairing service dogs to human beings with needs; and

WHEREAS, The puppies are trained from birth to the age of 24 months when they then become eligible for placement; and

WHEREAS, The dogs are trained to execute a variety of tasks, such as calming an autistic child, providing hearing assistance for someone who is hearing challenged, assisting balancing an unstable adult, and retrieving medicine for a veteran; and

WHEREAS, Dogs are paired with adults and children alike who suffer from a wide range of disabilities, such as autism, multiple sclerosis, and traumatic brain injury; and

WHEREAS, Brigadoon partners with the local community to provide outreach and training for at-risk youth, school community projects, Girl Scouts, and other organizations that support the developmentally disabled; and

WHEREAS, Brigadoon has partnered with the Warrior Transition Battalion at Joint Base Lewis-McChord; and

WHEREAS, Dogs are paired with our men and women returning from combat who suffer from a variety of postwar side effects, including Posttraumatic Stress Disorder; and

WHEREAS, Dogs are trained to specifically help our veterans of combat, to perform a variety of tasks, including turning on and off lights, waking their human partner during a frightening nightmare, and calming a veteran during a panic attack or flashback; and

WHEREAS, Brigadoon has joined forces with the Washington State Department of Veterans Affairs, to make sure our veterans are paired up with a compatible animal companion; and

WHEREAS, It is now anticipated that there are some 30,000 people in the State of Washington who qualify as people who could be paired with a Brigadoon Service Dog; and

WHEREAS, There is now a 30-name waiting list to receive a Brigadoon trained service animal;

NOW, THEREFORE, BE IT RESOLVED, That the Senate recognize and honor Brigadoon Service Dogs for all that they do for our community, our men and women of the armed services, and our adults and children who need their help; and

BE IT FURTHER RESOLVED, That Brigadoon be recognized as an example of kindness, compassion, and empowerment for our loved ones with special needs.

Senators McAuliffe, Ericksen and Hobbs spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8688.

The motion by Senator McAuliffe carried and the resolution was adopted by voice vote.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced representatives of the Brigadoon Service Dogs organization who were seated in the gallery.

MOTION

At 11:57 a.m., on motion of Senator Eide, the Senate recessed until 1:20 p.m.

AFTERNOON SESSION

The Senate was called to order at 1:20 p.m. by President Owen.

MOTION

Senator Haugen moved adoption of the following resolution:

SENATE RESOLUTION  
8700

By Senators Haugen, Eide, Litzow, Prentice, Kastama, Benton, Regala, Honeyford, Hill, Conway, Delvin, Stevens, Chase, Tom, Kline, Pridemore, Carrell, Roach, Baumgartner, Zarelli, Padden, Keiser, Pflug, Holmquist Newbry, Schoesler, Morton, Harper, Sheldon, King, Ranker, Swecker, Shin, Fain, Parlette, Rolfes, Frockt, Ericksen, Hargrove, Hobbs, Hatfield, Kilmer, Brown, Nelson, Hewitt, Murray, Becker, Fraser, McAuliffe, and Kohl-Welles

WHEREAS, Tony V. Radulescu was born August 7, 1967, in Bucharest, Romania, emigrated to America and graduated from Harrison High School in Harrison, New Jersey; and

WHEREAS, Sergeant Tony V. Radulescu served honorably in the U.S. Army from July 17, 1986, through June 17, 1996, and remained as an active member of the U.S. Army Reserve until retiring January 1, 2008, after 20 years of military service to his country; and

WHEREAS, Tony V. Radulescu was commissioned with the 79th Trooper Basic Training Class as a Washington State Patrol trooper and assigned to Bremerton; and

WHEREAS, Trooper Tony V. Radulescu connected so well with students in Kitsap County schools that he was repeatedly called back to speak time and again by popular demand; and

WHEREAS, Trooper Tony V. Radulescu performed his duties with an infectious smile and enjoyed spreading laughter among his friends, coworkers, and community; and

WHEREAS, Trooper Tony V. Radulescu honored Washington State Patrol Badge #557 on his chest and on his Patrol car license plate every day through selfless and courageous service; and

WHEREAS, Trooper Tony V. Radulescu was killed in the line of duty on February 23, 2012, after serving more than 16 years with the Washington State Patrol; and

WHEREAS, Trooper Tony V. Radulescu will be missed dearly by his brothers and sisters in the State Patrol family as well as those he touched throughout the community;

BE IT RESOLVED, That the Washington State Senate joins with the family, dear friends, and extended family of Trooper Tony V. Radulescu in mourning their and the state's incalculable personal and professional loss; and

BE IT FURTHER RESOLVED, That the Senate extends its deep appreciation and compassion to the dedicated families of State Patrol troopers, who all too often lose their loved ones in valiant service to their community and state; and

BE IT FURTHER RESOLVED, That the Senate commends, salutes, and memorializes Trooper Tony V. Radulescu for his exceptional service; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to the surviving family members of Trooper Tony V. Radulescu; Washington State Patrol Chief John Batiste; and Washington State Patrol Bremerton District Commander Bob Johnson.

Senators Haugen, Kilmer, Eide, Shin, Sheldon, Roach and Becker spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8700.

The motion by Senator Haugen carried and the resolution was adopted by voice vote.

#### INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced members of the family of Trooper Tony Radulescu: Erick Radulescu, son; Leslie and Maria Radulescu, father and stepmother; Mario and Mona Radulescu, brother and wife; George and Thet Nicholson, brother and wife; and Diana Radulescu, sister who were seated in the gallery.

#### MOTION

On motion of Senator Eide, the Senate reverted to the sixth order of business.

#### SECOND READING

HOUSE BILL NO. 2456, by Representatives Chandler, Blake and Fagan

Regarding disclosure of information relating to agriculture and livestock.

The measure was read the second time.

#### MOTION

On motion of Senator Hatfield, the rules were suspended, House Bill No. 2456 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hatfield and Honeyford spoke in favor of passage of the bill.

#### MOTION

On motion of Senator Ericksen, Senator Holmquist Newbry was excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2456.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2456 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Keiser

HOUSE BILL NO. 2456, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2541, by House Committee on Early Learning & Human Services (originally sponsored by Representatives Darneille, Dickerson, Jinkins, Roberts, Appleton, Kagi and Kenney)

Concerning the sealing of juvenile records.

The measure was read the second time.

#### MOTION

On motion of Senator Harper, the rules were suspended, Substitute House Bill No. 2541 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Harper spoke in favor of passage of the bill.

#### MOTION

On motion of Senator Harper, Senator Keiser was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2541.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2541 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 3; Absent, 1; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Harper, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker and Tom

Voting nay: Senators Hewitt, Parlette and Zarelli

Absent: Senator Hargrove

SUBSTITUTE HOUSE BILL NO. 2541, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2582, by House Committee on Health Care & Wellness (originally sponsored by Representatives Johnson, Cody, Ross, Jinkins, Green, Walsh, Hinkle, Clibborn, Liias, Kenney, Klippert, Smith, Alexander, Warnick, Fagan, Bailey, Ahern, Asay, Dahlquist, Kretz, DeBolt, Angel, Kelley, Hunt, Dickerson, Ladenburg, Orcutt, Zeiger, Wilcox, Finn, Wylie, Probst, Darneille, Moscoso, Kagi and Tharinger)

Requiring notice to patients for certain charges at a health care facility.

The measure was read the second time.

#### MOTION

Senator Keiser moved that the following amendment by Senators Keiser and Becker be adopted:

On page 2, line 8, after "(c) The" strike "total"

Senators Keiser and Becker spoke in favor of adoption of the amendment.

FIFTY SECOND DAY, FEBRUARY 29, 2012

2012 REGULAR SESSION

The President declared the question before the Senate to be the adoption of the amendment by Senators Keiser and Becker on page 2, line 8 to Engrossed Substitute House Bill No. 2582.

The motion by Senator Keiser carried and the amendment was adopted by voice vote.

#### MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute House Bill No. 2582 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser, Becker and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2582 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2582 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2582 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1627, by House Committee on Local Government (originally sponsored by Representatives Fitzgibbon, Maxwell, Springer, Eddy, Clibborn and Tharinger)

Limiting the authority of boundary review boards.

The measure was read the second time.

#### MOTION

Senator Pridemore moved that the following committee striking amendment by the Committee on Government Operations, Tribal Relations & Elections be adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 36.93.150 and 1994 c 216 s 15 are each amended to read as follows:

The board, upon review of any proposed action, shall take such of the following actions as it deems necessary to best carry out the intent of this chapter:

(1) Approve the proposal as submitted.

(2) Subject to RCW 35.02.170, modify the proposal by adjusting boundaries to add or delete territory. ((However, any

proposal for annexation of territory to a town shall be subject to RCW 35.21.010 and the board shall not add additional territory, the amount of which is greater than that included in the original proposal.)) Subject to the requirements of this chapter, a board may modify a proposal by adding territory that would increase the total area of the proposal before the board. A board, however, may not modify a proposal for annexation of territory to a city or town by adding an amount of territory that constitutes more than one hundred percent of the total area of the proposal before the board. Any modifications shall not interfere with the authority of a city, town, or special purpose district to require or not require preannexation agreements, covenants, or petitions. A board shall not modify the proposed incorporation of a city with an estimated population of seven thousand five hundred or more by removing territory from the proposal, or adding territory to the proposal, that constitutes ten percent or more of the total area included within the proposal before the board. However, a board shall remove territory in the proposed incorporation that is located outside of an urban growth area or is annexed by a city or town, and may remove territory in the proposed incorporation if a petition or resolution proposing the annexation is filed or adopted that has priority over the proposed incorporation, before the area is established that is subject to this ten percent restriction on removing or adding territory. A board shall not modify the proposed incorporation of a city with a population of seven thousand five hundred or more to reduce the territory in such a manner as to reduce the population below seven thousand five hundred.

(3) Determine a division of assets and liabilities between two or more governmental units where relevant.

(4) Determine whether, or the extent to which, functions of a special purpose district are to be assumed by an incorporated city or town, metropolitan municipal corporation, or another existing special purpose district.

(5) Disapprove the proposal except that the board shall not have jurisdiction: (a) To disapprove the dissolution or disincorporation of a special purpose district which is not providing services but shall have jurisdiction over the determination of a division of the assets and liabilities of a dissolved or disincorporated special purpose district; (b) over the division of assets and liabilities of a special purpose district that is dissolved or disincorporated pursuant to chapter 36.96 RCW; nor (c) to disapprove the incorporation of a city with an estimated population of seven thousand five hundred or more, but the board may recommend against the proposed incorporation of a city with such an estimated population.

Unless the board disapproves a proposal, it shall be presented under the appropriate statute for approval of a public body and, if required, a vote of the people. A proposal that has been modified shall be presented under the appropriate statute for approval of a public body and if required, a vote of the people. If a proposal, other than that for a city, town, or special purpose district annexation, after modification does not contain enough signatures of persons within the modified area, as are required by law, then the initiating party, parties or governmental unit has thirty days after the modification decision to secure enough signatures to satisfy the legal requirement. If the signatures cannot be secured then the proposal may be submitted to a vote of the people, as required by law.

The addition or deletion of property by the board shall not invalidate a petition which had previously satisfied the sufficiency of signature provisions of RCW 35.13.130 or 35A.14.120. When the board, after due proceedings held, disapproves a proposed action, such proposed action shall be unavailable, the proposing agency shall be without power to initiate the same or substantially the same as determined by the board, and any succeeding acts intended to or tending to effectuate that action shall be void, but such

action may be reinitiated after a period of twelve months from date of disapproval and shall again be subject to the same consideration.

The board shall not modify or deny a proposed action unless there is evidence on the record to support a conclusion that the action is inconsistent with one or more of the objectives under RCW 36.93.180. The board may not increase the area of a city or town annexation unless it holds a separate public hearing on the proposed increase and provides ten or more days' notice of the hearing to the registered voters and property owners residing within the area subject to the proposed increase. Every such determination to modify or deny a proposed action shall be made in writing pursuant to a motion, and shall be supported by appropriate written findings and conclusions, based on the record."

Senators Pridemore and Swecker spoke in favor of adoption of the committee striking amendment.

Senators Roach, Benton, Schoesler, Holmquist Newbry, Pflug and Padden spoke against adoption of the committee striking amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Government Operations, Tribal Relations & Elections to Engrossed Substitute House Bill No. 1627.

#### ROLL CALL

The Secretary called the roll on the adoption of the committee striking amendment by the Committee on Government Operations, Tribal Relations & Elections and the committee striking amendment was adopted by the following vote: Yeas, 25; Nays, 24; Absent, 0; Excused, 0.

Voting yea: Senators Brown, Chase, Conway, Eide, Fraser, Frockt, Hargrove, Harper, Haugen, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Rolfes, Shin and Tom

Voting nay: Senators Baumgartner, Becker, Benton, Carrell, Delvin, Ericksen, Fain, Hatfield, Hewitt, Hill, Holmquist Newbry, Honeyford, King, Litzow, Morton, Padden, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "annexation;" strike the remainder of the title and insert "and amending RCW 36.93.150."

#### POINT OF ORDER

Senator Benton: "Inquiring, Mr. President, since the committee amendment we just adopted would authorize an unelected board to annex an area even though indebtedness or excess tax levies exist for the new area, my question to you Mr. President, is; Under Initiative 1053, passed by the people of this state two years ago, would the passage of this bill, which would authorize a tax increase, actually constitute or require a two-thirds vote for passage of the senate?"

#### REPLY BY THE PRESIDENT

President Owen: "Senator Benton, since the action to raise the tax would be a local government action and not an action of

the state it doesn't fall under the 1053. The number of votes necessary to pass this bill is a simple majority."

#### POINT OF ORDER

Senator Roach: "Is the striking amendment on our desks?"

#### REPLY BY THE PRESIDENT

President Owen: "The striking amendment has passed and has been adopted."

#### MOTION

Senator Pridemore moved that the rules be suspended, Engrossed Substitute House Bill No. 1627 as amended by the Senate be advanced to third reading, the second reading considered the third and the bill be placed on final passage.

#### POINT OF ORDER

Senator Schoesler: "Well, doesn't it require two-thirds vote to go to third reading Mr. President?"

#### REPLY BY THE PRESIDENT

President Owen: "Senator Schoesler, under Rule 62 if you're within three days of the cut off or ten days to the end of session, which we are within both, it takes a simple majority."

The motion by Senator Pridemore carried by a rising vote.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1627 as amended.

Senator Pridemore spoke in favor of passage of the bill.

#### POINT OF ORDER

Senator Roach: "Mr. President, I put an amendment on the bar, I hope we do see that before the vote."

#### REPLY BY THE PRESIDENT

President Owen: "No. No. The vote had been taken. We were counting the votes on a division when your amendment came up. The President believes that we were, your amendment was not timely."

Senators Roach and Padden spoke against passage of the bill.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1627 as amended by the Senate, and the bill passed the Senate by the following vote: Yeas, 25; Nays, 24; Absent, 0; Excused, 0.

Voting yea: Senators Brown, Chase, Conway, Eide, Fraser, Frockt, Hargrove, Harper, Haugen, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Shin, Swecker and Tom

Voting nay: Senators Baumgartner, Becker, Benton, Carrell, Delvin, Ericksen, Fain, Hatfield, Hewitt, Hill, Holmquist Newbry, Honeyford, King, Litzow, Morton, Padden, Parlette, Pflug, Roach, Rolfes, Schoesler, Sheldon, Stevens and Zarelli

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ENGROSSED SUBSTITUTE HOUSE BILL NO. 1627 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Eide, Engrossed Substitute House Bill No. 1627 as amended by the Senate was immediately transmitted to the House of Representatives.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2223, by House Committee on Technology, Energy & Communications (originally sponsored by Representatives Takko, Morris, Armstrong and Angel)

Regarding the effective date of RCW 19.122.130, from the underground utility damage prevention act.

The measure was read the second time.

#### MOTION

On motion of Senator Ranker, the rules were suspended, Engrossed Substitute House Bill No. 2223 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Ranker and Morton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2223.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2223 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2223, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2293, by Representatives Pedersen, Rodne and Orwall

Expanding consumer cooperative provisions under the nonprofit miscellaneous and mutual corporations act.

The measure was read the second time.

#### MOTION

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On motion of Senator Kline, the rules were suspended, House Bill No. 2293 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2293.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2293 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Hargrove

HOUSE BILL NO. 2293, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2302, by House Committee on Judiciary (originally sponsored by Representatives Goodman, Warnick, Kenney, Kagi, Lias, Orwall, Billig, Hasegawa, Finn, Kelley, Rodne, Moeller, Dammeier, Reykdal, Van De Wege, Maxwell, Tharinger, Sells, Jinkins, Hurst, Green, McCoy, Smith, Pearson, Appleton, Darneille, Hunt, Fitzgibbon, Miloscia, Zeiger, Ryu, Stanford, Johnson and Seaquist)

Concerning being under the influence with a child in the vehicle.

The measure was read the second time.

#### MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Judiciary be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 46.61.507 and 2010 c 214 s 1 are each amended to read as follows:

(1) In every case where a person is arrested for a violation of RCW 46.61.502 or 46.61.504, the law enforcement officer shall make a clear notation if a child under the age of sixteen was present in the vehicle.

(2) A law enforcement officer shall promptly notify child protective services whenever a child is present in a vehicle being driven by his or her parent, guardian, ((or)) legal custodian, or sibling or half-sibling and that person is being arrested for a drug or alcohol-related driving offense. This section does not require law enforcement to take custody of the child unless there is no other responsible person, or an agency having the right to physical custody of the child that can be contacted, or the officer has reasonable grounds to believe the child should be taken into custody pursuant to RCW 13.34.050 or 26.44.050.

(3) For purposes of this section, "child" means any person under (~~thirteen~~) sixteen years of age.

**Sec. 2.** RCW 46.61.5055 and 2011 c 293 s 7 and 2011 c 96 s 35 are each reenacted and amended to read as follows:

(1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), 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 three hundred sixty-four days. 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 three hundred sixty-four days. 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.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), 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 three hundred sixty-four days 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; 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 three hundred sixty-four days 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.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three 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 three hundred sixty-four days 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

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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; 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 three hundred sixty-four days 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.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has four or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5)(a) The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an ignition interlock driver's license from the department and to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) The installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(c) An ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started when the

breath sample provided has an alcohol concentration of 0.025 or more.

(d) The court may waive the requirement that a person apply for an ignition interlock driver's license if the court makes a specific finding in writing that:

(i) The person lives out-of-state and the devices are not reasonably available in the person's local area;

(ii) The person does not operate a vehicle; or

(iii) The person is not eligible to receive an ignition interlock driver's license under RCW 46.20.385 because the person is not a resident of Washington, is a habitual traffic offender, has already applied for or is already in possession of an ignition interlock driver's license, has never had a driver's license, has been certified under chapter 74.20A RCW as noncompliant with a child support order, or is subject to any other condition or circumstance that makes the person ineligible to obtain an ignition interlock driver's license.

(e) If a court finds that a person is not eligible to receive an ignition interlock driver's license under this section, the court is not required to make any further subsequent inquiry or determination as to the person's eligibility.

(f) If the court orders that a person refrain from consuming any alcohol and requires the person to apply for an ignition interlock driver's license, and the person states that he or she does not operate a motor vehicle or the person is ineligible to obtain an ignition interlock driver's license, the court shall order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. Alcohol monitoring ordered under this subsection must be for the period of the mandatory license suspension or revocation. The person shall pay for the cost of the monitoring. The county or municipality where the penalty is being imposed shall determine the cost.

(g) The period of time for which ignition interlock use is required will be as follows:

(i) For a person who has not previously been restricted under this section, a period of one year;

(ii) For a person who has previously been restricted under (g)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (g)(ii) of this subsection, a period of ten years.

(h) Beginning with incidents occurring on or after September 1, 2011, when calculating the period of time for the restriction under RCW 46.20.720(3), the department must also give the person a day-for-day credit for the time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates. For the purposes of this subsection (5)(h), the term "all vehicles" does not include vehicles that would be subject to the employer exception under RCW 46.20.720(3).

(6) 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)) an ignition interlock or other device for an additional ((sixty days)) six months;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by a fine of not less than one thousand dollars and not 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;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by a fine of not less than two thousand dollars and not 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;

(d) In any case in which the person has two or three prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(7) 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.

(8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) 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:

(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; or

(c) 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 have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) 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.

(11)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days 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 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), (ii), or (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.

(12) 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-four 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-four days.

(13) 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(3).

(14) For purposes of this section and RCW 46.61.502 and 46.61.504:

(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;

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(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as 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, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as 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;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

**Sec. 3.** RCW 9.94A.533 and 2011 c 293 s 9 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 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm

enhancements, the following additional times shall be added to the 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 9.94A.728(3);

(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 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the 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(3);

(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(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

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.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(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. All enhancements under this subsection shall be mandatory, shall be

served in total confinement, and shall run consecutively to all other sentencing provisions.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, 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:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation 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(3);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection 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 sexual motivation 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;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return

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for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, 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 one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months 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 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child 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."

Senator Kline spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary to Engrossed Substitute House Bill No. 2302.

The motion by Senator Kline carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "vehicle;" strike the remainder of the title and insert "amending RCW 46.61.507 and 9.94A.533; reenacting and amending RCW 46.61.5055; and prescribing penalties."

#### MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 2302 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2302 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2302 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Erickson, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2302 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2349, by House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Kretz, Blake, Billig, Short, Hinkle, Uptegrove, Fitzgibbon and McCune)

Concerning the management of beavers.

The measure was read the second time.

#### MOTION

Senator Ranker moved that the following committee striking amendment by the Committee on Energy, Natural Resources & Marine Waters be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that beavers have historically played a significant role in maintaining the health of watersheds in the Pacific Northwest and act as key agents in riparian ecology. The live trapping and relocating of beavers has long been recognized as a beneficial wildlife management practice, and has been successfully utilized to restore and maintain stream ecosystems for over fifty years. The benefits of active beaver populations include reduced stream sedimentation, stream temperature moderation, higher dissolved oxygen levels, overall improved water quality, increased natural water storage capabilities within watersheds, and reduced stream velocities. These benefits improve and create habitat for many other species, including endangered salmon, river otters, sandhill cranes, trumpeter swans, and other riparian and aquatic species. Relocating beavers into their historic habitat provides a natural mechanism for improving the environmental conditions in Washington's riparian ecosystems without having to resort to governmental regulation or expensive publicly funded engineering projects.

**NEW SECTION. Sec. 2.** A new section is added to chapter 77.32 RCW to read as follows:

(1) The department shall permit the release of wild beavers on public and private lands with agreement from the property owner.

(2) The department may limit the release of wild beavers to areas of the state where:

(a) There is a low probability of released beavers becoming a nuisance or causing damage;

(b) Conditions exist for released beavers to improve, maintain, or manage stream or riparian ecosystem functions; and

(c) There is evidence of historic endemic beaver populations.

(3) The department may condition the release of beaver to maximize the relocation's success and minimize risk. Factors that the department may condition include:

(a) Stream gradient;

(b) Sufficiency of the water supply;

(c) Stream geomorphology;

(d) Adequacy of a food source;

(e) Proper site elevation and valley width;

(f) Age of the beavers relocated;

(g) Times of year for capture and relocation;

(h) Requirements for the capture, handling, and transport of the live beavers;

(i) Minimum and maximum numbers of beavers that can be relocated in one area; and

(j) Requirements for the permit holder to initially provide supplemental food and lodge building materials.

(4) The department may require specific training for those involved with capture, handling, and release of beavers.

(5) Nothing in this section creates any liability against the state or those releasing beavers nor authorizes any private right of action for any damages subsequently caused by beavers released pursuant to this section.

(6) For the purposes of this section, "beaver" means the American beaver (*Castor canadensis*).

(7) For the purposes of this section, beavers may only be released to carry out relocation: (a) Between two areas east of the crest of the Cascade mountains; or (b) from an area west of the crest of the Cascade mountains to an area east of the crest of the Cascade mountains.

**NEW SECTION. Sec. 3.** A new section is added to chapter 77.36 RCW to read as follows:

(1) Whenever the department receives a request for relocating beaver, the department must inform the requesting party of locations, if available, of surplus beaver available for capture and relocation. The department may identify nuisance beaver or areas with thriving beaver populations as a source population for capturing and relocating beaver.

(2) The department shall post on the agency's web site quarterly reports of nuisance beaver activity, beaver trapping, and beaver relocations reported to the department.

**NEW SECTION. Sec. 4.** (1) The department of fish and wildlife must initiate a beaver management stakeholder's forum by January 1, 2013, and report the outcomes of the forum to the legislature consistent with RCW 43.01.036.

(2) This section expires July 31, 2014."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Energy, Natural Resources & Marine Waters to Substitute House Bill No. 2349.

The motion by Senator Ranker carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "beavers;" strike the remainder of the title and insert "adding a new section to chapter 77.32 RCW; adding a new section to chapter 77.36 RCW; creating new sections; and providing an expiration date."

MOTION

On motion of Senator Ranker, the rules were suspended, Substitute House Bill No. 2349 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Ranker, Morton and Brown spoke in favor of passage of the bill.

Senators Delvin, Honeyford and Kline spoke on final passage.

POINT OF INQUIRY

Senator Holmquist Newbry: "I was going to ask the good Chair of the Committee this question. The Senator from the Seventh District, would you yield to a question? Ok, well, I'm just going to say this out to the abyss I guess. My question would be since it was pointed out that our beavers are one of our best natural engineers in our world, I was, just wondering if this bill before us would require them to have to take continued education credits and whether they would have to follow and work with L & I in regards to codes."

Senator Ranker: "Only if we can include domestic partnership for beavers."

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2349 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2349 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridmore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

SUBSTITUTE HOUSE BILL NO. 2349 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2617, by House Committee on Education Appropriations & Oversight (originally sponsored by Representatives Anderson and Haigh)

Regarding school district financial insolvency.

The measure was read the second time.

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## MOTION

Senator McAuliffe moved that the following committee amendment by the Committee on Ways & Means be adopted:

On page 23, line 6, after "RCW 28A.315.225 must be ", strike all material through the end of line 8, and insert "the established official boundaries of such districts existing on the first day of September of the year in which the property tax levy is made."

Senator McAuliffe spoke in favor of adoption of the committee amendment.

The President declared the question before the Senate to be the adoption of the committee amendment by the Committee on Ways & Means to Substitute House Bill No. 2617.

The motion by Senator McAuliffe carried and the committee amendment was adopted by voice vote.

## MOTION

On motion of Senator McAuliffe, the rules were suspended, Substitute House Bill No. 2617 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McAuliffe spoke in favor of passage of the bill.

## MOTION

On motion of Senator Frockt, Senator Kline was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2617 as amended by the Senate.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2617 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 3; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist Newbry, Honeyford and Schoesler

Excused: Senator Kline

SUBSTITUTE HOUSE BILL NO. 2617 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MOTION

On motion of Senator Harper, Senators Keiser and Ranker were excused.

## SECOND READING

SUBSTITUTE HOUSE BILL NO. 2389, by House Committee on Ways & Means (originally sponsored by Representative Orcutt)

Modifying the submission dates for economic and revenue forecasts.

The measure was read the second time.

## MOTION

On motion of Senator Murray, the rules were suspended, Substitute House Bill No. 2389 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2389.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2389 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Hargrove

Excused: Senators Kline and Ranker

SUBSTITUTE HOUSE BILL NO. 2389, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## MOTION

At 3:25 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

EVENING SESSION

The Senate was called to order at 5:05 p.m. by President Owen.

## SIGNED BY THE PRESIDENT

The President signed:

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5292,

ENGROSSED SUBSTITUTE SENATE BILL NO. 5575,

SUBSTITUTE SENATE BILL NO. 5631,

SENATE BILL NO. 6133,

SENATE BILL NO. 6157,

SENATE BILL NO. 6175,

SUBSTITUTE SENATE BILL NO. 6187,

ENGROSSED SENATE BILL NO. 6296,

SENATE BILL NO. 6385,

SUBSTITUTE SENATE BILL NO. 6423,

SENATE BILL NO. 6465,

SUBSTITUTE SENATE BILL NO. 6472.

## SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2314, by House Committee on Health Care & Wellness (originally sponsored by Representatives Cody and Green)

Concerning long-term care workers.

The measure was read the second time.

#### MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Health & Long-Term Care be adopted:

Strike everything after the enacting clause and insert the following:

#### "I. INTENT

NEW SECTION. **Sec. 101.** The legislature finds that numerous enactments and amendments to long-term care services statutes over many years have resulted in duplicated provisions, ambiguities, and other technical errors. The legislature intends to make corrections and clarify provisions governing services by long-term care workers.

#### II. DEFINITIONS

**Sec. 201.** RCW 18.88B.010 and 2009 c 2 s 17 are each amended to read as follows:

The definitions in ~~((RCW 74.39A.009))~~ this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Community residential service business" has the same meaning as defined in RCW 74.39A.009.

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

(3) "Home care aide" means a person certified under this chapter.

(4) "Individual provider" has the same meaning as defined in RCW 74.39A.009.

(5) "Personal care services" has the same meaning as defined in RCW 74.39A.009.

(6) "Secretary" means the secretary of the department of health.

(7) "Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

**Sec. 202.** RCW 74.39A.009 and 2009 c 580 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) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Community residential service business" means a business that:

(a) Is certified by the department of social and health services to provide to individuals who have a developmental disability as defined in RCW 71A.10.020(4):

- (i) Group home services;
- (ii) Group training home services;
- (iii) Supported living services; or
- (iv) Voluntary placement services provided in a licensed staff residential facility for children;

(b) Has a contract with the division of developmental disabilities to provide the services identified in (a) of this subsection; and

(c) All of the business's long-term care workers are subject to statutory or regulatory training requirements that are required to provide the services identified in (a) of this subsection.

(6) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

~~((6))~~ (7) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

~~((7))~~ (8) "Department" means the department of social and health services.

~~((8))~~ (9) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

~~((9))~~ (10) "Direct care worker" means a paid caregiver who provides direct, hands-on personal care services to persons with disabilities or the elderly requiring long-term care.

~~((10))~~ (11) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

~~((11))~~ (12) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

~~((12))~~ (13) "Home and community-based services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

~~((13))~~ (14) "Home care aide" means a long-term care worker who has obtained certification as a home care aide by the department of health.

~~((14))~~ (15) "Individual provider" is defined according to RCW 74.39A.240.

~~((15))~~ (16) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is

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long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

~~((16))~~ (17)(a) "Long-term care workers (~~((for the elderly or persons with disabilities))~~ or "long-term care workers)") include(s) all persons who (~~((are long-term care workers))~~) provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care (~~((employees of))~~) workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service (~~((providers))~~) businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

~~((17))~~ (18) "Nursing home" means a facility licensed under chapter 18.51 RCW.

~~((18))~~ (19) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

~~((19))~~ (20) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

~~((20))~~ (21) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.

~~((21))~~ (22) "Secretary" means the secretary of social and health services.

~~((22))~~ (23) "Secretary of health" means the secretary of health or the secretary's designee.

~~((23))~~ (24) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

~~((24))~~ (25) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

### III. CREDENTIAL REQUIREMENT

**Sec. 301.** RCW 18.88B.021 and 2012 c 1 s 103 (Initiative Measure No. 1163) are each amended to read as follows:

(1) (~~((Effective January 1, 2011;))~~) Beginning January 7, 2012, except as provided in RCW (~~((18.88B.040, the department of health shall require that))~~) 18.88B.041, any person hired as a long-term care

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worker (~~((for the elderly or persons with disabilities))~~) must be certified as a home care aide as provided in this chapter within one hundred fifty calendar days (~~((from))~~) after the date of being hired or within one hundred fifty calendar days after the effective date of this section, whichever is later. In computing the time periods in this subsection, the first day is the date of hire or the effective date of this section, whichever is applicable.

(2) ((Except as provided in RCW 18.88B.040, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to RCW 74.39A.073 and 18.88B.030.

(3)) (a) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified (~~((pursuant to))~~) as provided in this chapter.

~~((4))~~ (b) This section does not prohibit a person: (i) From practicing a profession for which the person has been issued a license or which is specifically authorized under this state's laws; or (ii) who is exempt from certification under RCW 18.88B.041 from providing services as a long-term care worker.

(c) In consultation with consumer and worker representatives, the department shall, by January 1, 2013, establish by rule a single scope of practice that encompasses both long-term care workers who are certified home care aides and long-term care workers who are exempted from certification under RCW 18.88B.041.

(3) The department (~~((of health))~~) shall adopt rules (~~((by August 1, 2010;))~~) to implement this section.

**Sec. 302.** RCW 18.88B.041 and 2012 c 1 s 105 (Initiative Measure No. 1163) are each amended to read as follows:

(1) The following long-term care workers are not required to become a certified home care aide pursuant to this chapter(~~(:~~

~~(+))~~:

~~((a(i)A))~~ (a)(i)(A) Registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved training program for certified nursing assistants under chapter 18.88A RCW, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary (~~((of health))~~), or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary (~~((of health))~~) determines that the circumstances do not require certification. (~~((Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.~~

~~((2))~~ (B) A person (~~((already employed))~~) who was initially hired as a long-term care worker prior to January (~~((1, 2014))~~) 7, 2012, and who completes all of his or her training requirements in effect as of the date he or she was hired(~~((, is not required to obtain certification))~~).

(ii) Individuals exempted by (a)(i) of this subsection may obtain certification as a home care aide (~~((from the department of health))~~) without fulfilling the training requirements in RCW (~~((74.39A.073))~~) 74.39A.074(1)(d)(ii) but must successfully complete a certification examination pursuant to RCW (~~((18.88B.030))~~) 18.88B.031.

~~((3))~~ (b) All long-term care workers employed by (~~((supported living providers are not required to obtain certification under this chapter))~~) community residential service businesses.

~~((4))~~ (c) An individual provider caring only for his or her biological, step, or adoptive child or parent (~~((is not required to obtain certification under this chapter))~~).

~~((5))~~ (d) Prior to (~~((June 30))~~) July 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month (~~((is not required to obtain certification under this chapter))~~).

~~((6))~~ (2) A long-term care worker exempted by this section from the training requirements contained in RCW ~~((74.39A.073))~~ 74.39A.074 may not be prohibited from enrolling in training pursuant to that section.

~~((7))~~ (3) The department ~~((of health))~~ shall adopt rules ~~((by August 1, 2010))~~ to implement this section.

**NEW SECTION. Sec. 303.** A new section is added to chapter 18.88B RCW to read as follows:

(1) The department has the authority to:

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination, and renew such certificates;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements, including background checks, for certification.

(2) The department shall adopt rules that establish the procedures, including criteria for reviewing an applicant's state and federal background checks, and examinations necessary to implement this section.

**Sec. 304.** RCW 18.88B.031 and 2012 c 1 s 104 (Initiative Measure No. 1163) are each amended to read as follows:

(1) ~~((Effective January 1, 2014))~~ Except as provided in RCW ~~((18.88B.040))~~ 18.88B.041 and subject to the other requirements of this chapter, ~~((the department of health shall require that all))~~ to be certified as a home care aide, a long-term care worker~~((s))~~ must successfully complete the training required under RCW 74.39A.074(1) and a certification examination. Any long-term care worker failing to make the required grade for the examination ~~((will))~~ may not be certified as a home care aide.

(2) The department ~~((of health))~~, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. ~~((Unless excluded))~~ Except as provided by RCW ~~((18.88B.040 (1) and (2))~~ 18.88B.041(1)(a)(ii), only those who have completed the training requirements in RCW ~~((74.39A.073))~~ 74.39A.074(1) shall be eligible to sit for this examination.

(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department ~~((of health))~~ shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department ~~((of health))~~ or by a contractor to the department ~~((of health))~~ that is neither an employer of long-term care workers or a private contractor~~((s))~~ providing training services under this chapter.

(5) ~~((The department of health has the authority to:~~

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.

~~((6))~~ The department ~~((of health))~~ shall adopt rules ~~((by August 1, 2010, that establish the procedures, including criteria for reviewing an applicant's state and federal background checks, and examinations necessary to carry this section into effect))~~ to implement this section.

#### IV. TRAINING PROVISIONS

**Sec. 401.** RCW 74.39A.074 and 2012 c 1 s 107 (Initiative Measure No. 1163) are each amended to read as follows:

(1) ~~((Effective January 1, 2014))~~ (a) Beginning January 7, 2012, except ~~((as provided in RCW 18.88B.040))~~ for long-term care workers exempt from certification under RCW 18.88B.041(1)(a) and, until January 1, 2016, those exempt under RCW 18.88B.041(1)(b), all persons ~~((employed))~~ hired as long-term care workers ~~((for the elderly or persons with disabilities))~~ must meet the minimum training requirements in this section within one hundred twenty calendar days ~~((of employment))~~ after the date of being hired or within one hundred twenty calendar days after the effective date of this section, whichever is later. In computing the time periods in this subsection, the first day is the date of hire or the effective date of this section, whichever is applicable.

~~((2))~~ All persons employed as long-term care workers must obtain (b) Except as provided in RCW 74.39A.076, the minimum training requirement is seventy-five hours of entry-level training approved by the department. A long-term care worker must ~~((accomplish))~~ successfully complete five of these seventy-five hours before ~~((becoming))~~ being eligible to provide care.

~~((3))~~ (c) Training required by (d) of this subsection ~~((4))~~ of this section will be applied applies toward~~((s))~~ the training required under RCW 18.20.270 or 70.128.230 ~~((as well as))~~ or any statutory or regulatory training requirements for long-term care workers employed by ~~((supportive living providers))~~ community residential service businesses.

~~((4))~~ Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. (d) The seventy-five hours of entry-level training required shall be as follows:

~~((a))~~ (i) Before a long-term care worker is eligible to provide care, he or she must complete:

(A) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment; and

~~((b))~~ Before a long-term care worker is eligible to provide care, he or she must complete (B) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

~~((c))~~ All long-term care workers must complete (ii) Seventy hours of long-term care basic training, including training related to core competencies and population specific competencies.

~~((5))~~ (2) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.

~~((6))~~ (3) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

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((7) The department of health shall adopt rules by August 1, 2010, to implement subsections (1), (2), and (3) of this section.

(8)) ~~(4)~~ The department shall adopt rules ((by August 1, 2010,)) to implement ((subsections (4) and (5) of)) this section.

**Sec. 402.** RCW 74.39A.076 and 2012 c 1 s 108 (Initiative Measure No. 1163) are each amended to read as follows:

(1) (~~Effective January 1, 2011,))~~ Beginning January 7, 2012, except for long-term care workers exempt from certification under RCW 18.88B.041(1)(a):

(a) A biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days ((of) after becoming an individual provider or within one hundred twenty calendar days after the effective date of this section, whichever is later.

~~((2) Effective January 1, 2011,))~~ (b) Individual providers identified in ((a) and) (b)(i) and (ii) of this subsection must complete thirty-five hours of training within the first one hundred twenty days ((of) after becoming an individual provider or within one hundred twenty calendar days after the effective date of this section, whichever is later. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

~~((a))~~ (i) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by (a) of this subsection ((1) of this section); and

~~((b) Before)~~ (ii) Until January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(2) In computing the time periods in this section, the first day is the date of hire or the effective date of this section, whichever is applicable.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules ~~((by August 1, 2010,))~~ to implement this section.

**Sec. 403.** RCW 74.39A.331 and 2012 c 1 s 111 (Initiative Measure No. 1163) are each amended to read as follows:

Long-term care workers shall be offered on-the-job training or peer mentorship for at least one hour per week in the first ninety days of work from a long-term care worker who has completed at least twelve hours of mentor training and is mentoring no more than ten other workers at any given time. This requirement applies to long-term care workers who begin work on or after July 1, ~~((2011))~~ 2012, except that it does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.

**Sec. 404.** RCW 74.39A.351 and 2012 c 1 s 113 (Initiative Measure No. 1163) are each amended to read as follows:

(1) The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate seventy hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training

opportunities shall be offered through the training partnership established under RCW 74.39A.360.

(2) Training topics offered under this section shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training.

(3) The department may not require long-term care workers to obtain the training described in this section. ~~((This))~~

(4) The requirement to offer advanced training applies beginning January 1, ~~((2012))~~ 2013, except that it does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.

**Sec. 405.** RCW 74.39A.341 and 2012 c 1 s 112 (Initiative Measure No. 1163) are each amended to read as follows:

(1) ~~((The department of health shall ensure that))~~ All long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning ~~((on))~~ July 1, ~~((2011))~~ 2012.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter ~~((2, Laws of 2009))~~ 18.88B RCW.

(3) Unless voluntarily certified as a home care aide under chapter ~~((2, Laws of 2009))~~ 18.88B RCW, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child; ~~((and))~~

(b) Before January 1, 2016, a long-term care worker employed by a community residential service business; or

(c) Before ((June 30)) July 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules ~~((by August 1, 2010,))~~ to implement subsection ~~((s))~~ (1) ~~((2, and (3)))~~ of this section.

(7) The department shall adopt rules ~~((by August 1, 2010,))~~ to implement subsection ~~((4))~~ (2) of this section.

**NEW SECTION. Sec. 406.** A new section is added to chapter 18.88B RCW to read as follows:

(1) The legislature recognizes that nurses have been successfully delegating nursing care tasks to family members and others for many years. The opportunity for a nurse to delegate nursing care tasks to home care aides certified under this chapter may enhance the viability and quality of health care services in community-based care settings and in-home care settings to allow individuals to live as independently as possible with maximum safeguards.

(2)(a) A certified home care aide who wishes to perform a nurse delegated task pursuant to RCW 18.79.260 must complete nurse delegation core training under chapter 18.88A RCW before the home care aide may be delegated a nursing care task by a registered nurse delegator. Before administering insulin, a home care aide must also complete the specialized diabetes nurse delegation training under chapter 18.88A RCW. Before commencing any

specific nursing care tasks authorized under RCW 18.79.260, the home care aide must:

(i) Provide to the delegating nurse a transcript or certificate of successful completion of training issued by an approved instructor or approved training entity indicating the completion of basic core nurse delegation training; and

(ii) Meet any additional training requirements mandated by the nursing care quality assurance commission. Any exception to these training requirements is subject to RCW 18.79.260(3)(e)(vi).

(b) In addition to meeting the requirements of (a) of this subsection, before providing delegated nursing care tasks that involve administration of insulin by injection to individuals with diabetes, the home care aide must provide to the delegating nurse a transcript or certificate of successful completion of training issued by an approved instructor or approved training entity indicating completion of specialized diabetes nurse delegation training. The training must include, but is not limited to, instruction regarding diabetes, insulin, sliding scale insulin orders, and proper injection procedures.

(3) The home care aide is accountable for his or her own individual actions in the delegation process. Home care aides accurately following written delegation instructions from a registered nurse are immune from liability regarding the performance of the delegated duties.

(4) Home care aides are not subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing care task based on his or her concerns about patient safety issues. No provider of a community-based care setting as defined in RCW 18.79.260, 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 about the nurse delegation process or cooperated in the investigation of the complaint.

**Sec. 407.** RCW 18.79.260 and 2009 c 203 s 1 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, 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, optometrist, 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, and may not delegate piercing or severing of tissues. Acts that require nursing judgment shall not be delegated.

(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.

(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 or home care aides certified under chapter 18.88B RCW. Simple care tasks such as blood pressure monitoring, personal care service, diabetic insulin device set up, verbal verification of insulin dosage for sight-impaired individuals, 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 people with developmental disabilities, 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.

(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. Other than delegation of the administration of insulin by injection for the purpose of caring for individuals with diabetes, the administration of medications by injection, sterile procedures, and central line maintenance may never be delegated.

(v) When delegating insulin injections under this section, the registered nurse delegator must instruct the individual regarding proper injection procedures and the use of insulin, demonstrate proper injection procedures, and must supervise and evaluate the individual performing the delegated task weekly during the first four weeks of delegation of insulin injections. If the registered nurse delegator determines that the individual is competent to perform the injection properly and safely, supervision and evaluation shall occur at least every ninety days thereafter.

(vi)(A) The registered nurse shall verify that the nursing assistant or home care aide, as the case may be, has completed the required core nurse delegation training required in chapter 18.88A or 18.88B RCW prior to authorizing delegation.

(B) Before commencing any specific nursing tasks authorized to be delegated in this section, a home care aide must be certified pursuant to chapter 18.88B RCW and must comply with section 406 of this act.

(vii) 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.

(viii) 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

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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.

(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.

**NEW SECTION. Sec. 408.** By September 1, 2012, the department of social and health services shall adopt rules that reflect all statutory and regulatory training requirements for long-term care workers, as defined in RCW 74.39A.009, to provide the services identified in RCW 74.39A.009(5)(a).

## V. BACKGROUND CHECK REQUIREMENT

**NEW SECTION. Sec. 501.** A new section is added to chapter 18.88B RCW to read as follows:

A long-term care worker disqualified from working with vulnerable persons under chapter 74.39A RCW may not be certified or maintain certification as a home care aide under this chapter. To allow the department to satisfy its certification responsibilities under this chapter, the department of social and health services shall share the results of state and federal background checks conducted pursuant to RCW 74.39A.056 with the department. Neither department may share the federal background check results with any other state agency or person.

**Sec. 502.** RCW 74.39A.261 and 2012 c 1 s 102 (Initiative Measure No. 1163) are each amended to read as follows:

The department must perform criminal background checks for individual providers and prospective individual providers ((and ensure that the authority has ready access to any long-term care abuse and neglect registry used by the department. Individual providers who are hired after January 1, 2012, are subject to background checks)) under RCW ((74.39A.055)) 74.39A.056.

**Sec. 503.** RCW 74.39A.056 and 2012 c 1 s 101 (Initiative Measure No. 1163) are each amended to read as follows:

(1)(a) All long-term care workers ~~((for the elderly or persons with disabilities hired after January 1, 2012,))~~ shall be screened through state and federal background checks in a uniform and timely manner to ~~((ensure))~~ verify that they do not have a criminal history that would disqualify them from working with vulnerable persons. ~~((These))~~ The department must perform criminal background checks for individual providers and prospective individual providers and make the information available as provided by law.

(b)(i) Except as provided in (b)(ii) of this subsection, for long-term care workers hired after January 7, 2012, the background checks required under this section shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. The department shall not pass on the cost of these criminal background checks to the workers or their employers.

(ii) This subsection does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.

((2) To allow the department of health to satisfy its certification responsibilities under chapter 18.88B RCW,) (c) The department shall share state and federal background check results with the

department of health((. Neither department may share the federal background check results with any other state agency or person)) in accordance with section 501 of this act.

~~((3) The department shall not pass on the cost of these criminal background checks to the workers or their employers.))~~ (2) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority or a court of law or entered into a state registry with a final substantiated finding 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.

(3) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have final substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, final substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information must also be shared with the department of health to advance the purposes of chapter 18.88B RCW.

(4) The department shall adopt rules to implement ~~((the provisions of))~~ this section ~~((by August 1, 2010)).~~

**Sec. 504.** RCW 18.20.125 and 2011 1st sp.s. c 31 s 15 are each amended to read as follows:

(1) 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, residents, and other interested parties. 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)(a) 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.

(b) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January ~~((1, 2014))~~ 7, 2012, are subject to background checks under RCW ~~((74.39A.055))~~ 74.39A.056.

(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. 505.** RCW 43.20A.710 and 2011 1st sp.s. c 31 s 16 are each amended to read as follows:

(1) The secretary shall investigate the conviction records, pending charges and disciplinary board final decisions of:

(a) Any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(b) Individual providers who are paid by the state and providers who are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(c) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, persons with developmental disabilities, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) The secretary shall require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation as provided in RCW 43.43.837. Unless otherwise authorized by law, the secretary shall use the information solely for the purpose of determining the character, suitability, and competence of the applicant.

(3) Except as provided in subsection (4) of this section, an individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110. However, this subsection does not supersede RCW 74.15.030(2)(b).

(4) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January ~~((1, 2014))~~ 7, 2012, are subject to background checks under RCW ~~((74.39A.055))~~ 74.39A.056, except that the department may require a background check at any time under RCW 43.43.837. For the purposes of this subsection, "background check" includes, but is not limited to, a fingerprint check submitted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(5) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(6) The secretary shall provide the results of the state background check on long-term care workers, including individual providers, to the persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and

competence of the applicants. If the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

(7) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

**Sec. 506.** RCW 43.43.837 and 2011 1st sp.s. c 31 s 17 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January ~~((1, 2014))~~ 7, 2012, are subject to background checks under RCW ~~((74.39A.055))~~ 74.39A.056.

(3) To satisfy the shared background check requirements provided for in RCW 43.215.215 and 43.20A.710, the department of early learning and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

(4) The secretary shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law.

(5) Any secure facility operated by the department under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

(6) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

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(a) A fingerprint-based background check is pending; and  
 (b) The applicant or service provider is not disqualified based on the immediate result of the background check.

(7) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;

(f) Services in, or to residents of, a secure facility under RCW 71.09.115; and

(g) Foster care as required under RCW 74.15.030.

(8) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

(9) Children's administration service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

(10) The department shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

(11) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:

(i) Applying for a license or certification from the department;

(ii) Seeking a contract with the department or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer;

(iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or

(v) A department applicant who will or may work in a department-covered position.

(b) "Authorized" means the department grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department program; or

(iv) Work or serve in a department-covered position.

(c) "Department" means the department of social and health services.

(d) "Secretary" means the secretary of the department of social and health services.

(e) "Secure facility" has the meaning provided in RCW 71.09.020.

(f) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department client or guardian of a department client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered. "Service provider" does not include those certified under chapter 70.96A RCW.

**Sec. 507.** RCW 74.39A.095 and 2011 1st sp.s. c 31 s 14 and 2011 1st sp.s. c 21 s 5 are each reenacted and amended to read as follows:

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide oversight of the care being provided to consumers receiving services under this section to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but are not limited to:

(a) Verification that any individual provider has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Monitoring the consumer's plan of care to verify that it adequately meets the needs of the consumer, through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) Reassessing and reauthorizing services;

(e) Monitoring of individual provider performance; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider. Individual providers who are hired after January (~~4, 2014~~) 7, 2012, are subject to background checks under RCW (~~74.39A.055~~) 74.39A.056.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement by the individual provider that he or she has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

## VI. ENFORCEMENT

**Sec. 601.** RCW 18.88B.050 and 2011 1st sp.s. c 31 s 4 are each amended to read as follows:

(1) The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, issuance and renewal of certificates, and the discipline of persons with certificates under this chapter. The secretary (~~(of health)~~) shall be the disciplinary authority under this chapter.

(2) The secretary (~~(of health)~~) may take action to immediately suspend the certification of a (~~(long term care worker)~~) home care aide upon finding that conduct of the (~~(long term care worker)~~) home care aide has caused or presents an imminent threat of harm to a functionally disabled person in his or her care.

(3) If the secretary (~~(of health)~~) imposes suspension or conditions for continuation or renewal of certification, the

suspension or conditions for continuation or renewal are effective immediately upon notice and shall continue in effect pending the outcome of any hearing.

(4) The department (~~(of health)~~) shall take appropriate enforcement action related to the licensure of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this chapter or whose certification is revoked or, if exempted from certification by RCW (~~(18.88B.040)~~) 18.88B.041, who has not completed his or her required training pursuant to (~~(this chapter)~~) RCW 74.39A.074.

(5) Chapter 34.05 RCW shall govern actions by the department (~~(of health)~~) under this section.

(6) The department (~~(of health)~~) shall adopt rules (~~(by August 1, 2013,)~~) to implement this section.

**Sec. 602.** RCW 74.39A.086 and 2012 c 1 s 109 (Initiative Measure No. 1163) are each amended to read as follows:

(1) The department:

(a) Shall deny payment to any individual provider of home care services who has not been certified ((by the department of health)) as a home care aide as required under chapter ((2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040,)) 18.88B RCW or whose certification is revoked or, if exempted from certification under RCW 18.88B.041, who has not completed his or her required training pursuant to (~~(chapter 2, Laws of 2009))~~ RCW 74.39A.074.

(~~((2) The department))~~ (b) May terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider has not been certified or the individual provider's certification is revoked under chapter ((2, Laws of 2009)) 18.88B RCW or, if exempted from certification by RCW ((18.88B.040)) 18.88B.041, the individual provider has not completed his or her required training pursuant to (~~(chapter 2, Laws of 2009))~~ RCW 74.39A.074.

(~~((3))~~) (2) The department shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state(,) to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under chapter (~~(2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040,))~~ 18.88B RCW or whose certification is revoked or, if exempted from certification under RCW 18.88B.041, who has not completed his or her required training pursuant to (~~(chapter 2, Laws of 2009))~~ RCW 74.39A.074.

(~~((4))~~) (3) Chapter 34.05 RCW shall govern actions by the department under this section.

(~~((5))~~) (4) The department shall adopt rules (~~(by August 1, 2010,)~~) to implement this section.

## VII. MISCELLANEOUS

**Sec. 701.** RCW 74.39A.051 and 2012 c 1 s 106 (Initiative Measure No. 1163) are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate

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percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080((~~RCW~~)) or 70.128.160, or chapter 18.51 ((~~RCW~~)) or ((~~chapter~~)) 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) ((All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055. This information will be shared with the department of health in accordance with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

(8) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information will also be shared with the department of health to advance the purposes of chapter 2, Laws of 2009.

(10) Until December 31, 2010,)) Background checks of long-term care workers must be conducted as provided in RCW 74.39A.056.

(8) Except as provided in RCW 74.39A.074 and 74.39A.076, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules ((by March 1, 2002,)) for the implementation of this section. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

((11) Until December 31, 2010, in an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training.

(13) The department shall establish, by rule, background checks and other quality assurance requirements for long-term care workers who provide in-home services funded by Medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(14)) (9) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

((15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.))

**Sec. 702.** RCW 18.20.270 and 2002 c 233 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) "Caregiver" includes any person who provides residents with hands-on personal care on behalf of a boarding home, except volunteers who are directly supervised.

(b) "Direct supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section, is on the premises, and is quickly and easily available to the caregiver.

(2) Training must have the following components: Orientation, basic training, specialty training as appropriate, and continuing education. All boarding home employees or volunteers who routinely interact with residents shall complete orientation. Boarding home administrators, or their designees, and caregivers shall complete orientation, basic training, specialty training as appropriate, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate boarding home staff to all boarding home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care (~~(or within one hundred twenty days of September 1, 2002, whichever is later)~~). Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision. Boarding home administrators, or their designees, must complete basic training and demonstrate competency within one hundred twenty days of employment (~~(or within one hundred twenty days of September 1, 2002, whichever is later)~~).

(5) For boarding homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of administrators, or designees, and caregivers.

(a) Specialty training consists of modules on the core knowledge and skills that caregivers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care to a resident having special needs (~~(or within one hundred twenty days of September 1, 2002, whichever is later)~~). However, if specialty training is not integrated with basic training, the specialty training must be completed within ninety days of completion of basic training. Until competency in the core specialty areas has been demonstrated, caregivers shall not provide hands-on personal care to residents with special needs without direct supervision.

(c) Boarding home administrators, or their designees, must complete specialty training and demonstrate competency within one hundred twenty days (~~(of September 1, 2002, or one hundred twenty days)~~) from the date on which the administrator or his or her designee is hired, (~~(which ever is later)~~), if the boarding home serves one or more residents with special needs.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements

of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(10) The department shall develop criteria for the approval of orientation, basic training, and specialty training programs.

(11) Boarding homes that desire to deliver facility-based training with facility designated trainers, or boarding homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials that are substantially similar to or better than the materials developed by the department. The department may approve a curriculum based upon attestation by a boarding home administrator that the boarding home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled yearly inspection and investigation required under RCW 18.20.110. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(12) The department shall adopt rules (~~(by September 1, 2002,)~~) for the implementation of this section.

(13)(a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and shall be applied to ((~~(a)~~) (i) employees hired subsequent to September 1, 2002; and ((~~(b)~~) (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 shall be subject to all applicable requirements of this section. ((However, prior to September 1, 2002, nothing in this section affects the current training requirements under RCW 74.39A.010.))

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by facilities licensed under this chapter are also subject to the training requirements under RCW 74.39A.074.

**Sec. 703.** RCW 70.128.120 and 2011 1st sp.s. c 3 s 205 are each amended to read as follows:

Each adult family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual

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average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy and the ability to communicate in the English language;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as required by RCW ((74.39A.073)) 74.39A.074, and in rules adopted by the department;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or department rules adopted under this chapter, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW ((74.39A.050(8))) 74.39A.056(2);

(9) For those applying to be licensed as providers, and for resident managers whose employment begins after August 24, 2011, at least one thousand hours in the previous sixty months of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home. The applicant or resident manager must have credible evidence of the successful, direct caregiving experience or, currently hold one of the following professional licenses: Physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; physician assistant licensed under chapter 18.71A RCW; registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW;

(10) For applicants, proof of financial solvency, as defined in rule; and

(11) Applicants must successfully complete an adult family home administration and business planning class, prior to being granted a license. The class must be a minimum of forty-eight hours of classroom time and approved by the department. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose.

**Sec. 704.** RCW 70.128.130 and 2011 1st sp.s. c 3 s 206 are each amended to read as follows:

(1) The provider is ultimately responsible for the day-to-day operations of each licensed adult family home.

(2) The provider shall promote the health, safety, and well-being of each resident residing in each licensed adult family home.

(3) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(4) In order to preserve and promote the residential home-like nature of adult family homes, adult family homes licensed after August 24, 2011, shall:

(a) Have sufficient space to accommodate all residents at one time in the dining and living room areas;

(b) Have hallways and doorways wide enough to accommodate residents who use mobility aids such as wheelchairs and walkers; and

(c) Have outdoor areas that are safe and accessible for residents to use.

(5) The adult family home must provide all residents access to resident common areas throughout the adult family home including, but not limited to, kitchens, dining and living areas, and bathrooms, to the extent that they are safe under the resident's care plan.

(6) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(7) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have working smoke detectors in each bedroom where a resident is located, shall have working fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(8) The adult family home shall ensure that all residents can be safely evacuated in an emergency.

(9) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(10) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(11) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(12) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(13) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW ((74.39A.050(8))) 74.39A.056(2). A provider may conditionally employ a person pending the completion of a criminal conviction background inquiry, but may not allow the person to have unsupervised access to any resident.

(14) A provider shall offer activities to residents under care as defined by the department in rule.

(15) An adult family home must be financially solvent, and upon request for good cause, shall provide the department with detailed information about the home's finances. Financial records of the adult family home may be examined when the department has good cause to believe that a financial obligation related to resident care or services will not be met.

(16) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. The provider shall ensure that a qualified caregiver is on-site whenever a resident is at the adult family home; any exceptions will be specified by the department in rule.

Notwithstanding RCW 70.128.230, until orientation and basic training are successfully completed, a caregiver may not provide hands-on personal care to a resident without on-site supervision by a person who has successfully completed basic training or been exempted from the training pursuant to statute.

(17) The provider and resident manager must assure that there is:

(a) A mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as language lines; and

(b) Staff on-site at all times capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans.

**Sec. 705.** RCW 70.128.230 and 2002 c 233 s 3 are each amended to read as follows:

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

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care ~~((or within one hundred twenty days of September 1, 2002, whichever is later)).~~ Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without indirect supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers.

(a) Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness,

dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

~~((12))~~ (a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to ((+)) (i) employees hired subsequent to September 1, 2002; or ((+)) (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section. ((However, until September 1, 2002, nothing in this section affects the current training requirements under RCW 70.128.120 and 70.128.130.))

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by an adult family home are also subject to the training requirements under RCW 74.39A.074.

**Sec. 706.** RCW 74.39A.010 and 1995 1st sp.s. c 18 s 14 are each amended to read as follows:

(1) To the extent of available funding, the department of social and health services may contract with licensed boarding homes

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under chapter 18.20 RCW and tribally licensed boarding homes for assisted living services and enhanced adult residential care. The department shall develop rules for facilities that contract with the department for assisted living services or enhanced adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW ((74.39A.050)) 74.39A.051 and consistent with chapter 70.129 RCW;

(b) Standards for resident living areas consistent with RCW 74.39A.030;

(c) Training requirements for providers and their staff.

(2) The department's rules shall provide that services in assisted living and enhanced adult residential care:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include, but not be limited to, personal care, nursing services, medication administration, and supportive services that promote independence and self-sufficiency;

(c) Are of sufficient scope to assure that each resident who chooses to remain in the assisted living or enhanced adult residential care may do so, to the extent that the care provided continues to be cost-effective and safe and promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice;

(d) Are directed first to those persons most likely, in the absence of enhanced adult residential care or assisted living services, to need hospital, nursing facility, or other out-of-home placement; and

(e) Are provided in compliance with applicable facility and professional licensing laws and rules.

(3) When a facility contracts with the department for assisted living services or enhanced adult residential care, only services and facility standards that are provided to or in behalf of the assisted living services or enhanced adult residential care client shall be subject to the department's rules.

**Sec. 707.** RCW 74.39A.020 and 2004 c 142 s 15 are each amended to read as follows:

(1) To the extent of available funding, the department of social and health services may contract for adult residential care.

(2) The department shall, by rule, develop terms and conditions for facilities that contract with the department for adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW ((74.39A.050)) 74.39A.051 and consistent with chapter 70.129 RCW; and

(b) Training requirements for providers and their staff.

(3) The department shall, by rule, provide that services in adult residential care facilities:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include personal care and other services that promote independence and self-sufficiency and aging in place;

(c) Are directed first to those persons most likely, in the absence of adult residential care services, to need hospital, nursing facility, or other out-of-home placement; and

(d) Are provided in compliance with applicable facility and professional licensing laws and rules.

(4) When a facility contracts with the department for adult residential care, only services and facility standards that are provided to or in behalf of the adult residential care client shall be subject to the adult residential care rules.

(5) To the extent of available funding, the department may also contract under this section with a tribally licensed boarding home for the provision of services of the same nature as the services provided by adult residential care facilities. The provisions of subsections (2)(a) and (b) and (3)(a) through (d) of this section apply to such a contract.

**Sec. 708.** RCW 74.39A.250 and 2011 1st sp.s. c 21 s 8 are each amended to read as follows:

(1) The department shall provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers through the establishment of a referral registry of individual providers and prospective individual providers. Before placing an individual provider or prospective individual provider on the referral registry, the department shall determine that:

(a) The individual provider or prospective individual provider has met the minimum requirements for training set forth in RCW ((74.39A.050)) 74.39A.051;

(b) The individual provider or prospective individual provider has satisfactorily undergone a criminal background check conducted within the prior twelve months; and

(c) The individual provider or prospective individual provider is not listed on any long-term care abuse and neglect registry used by the department.

(2) The department shall remove from the referral registry any individual provider or prospective individual provider that does not meet the qualifications set forth in subsection (1) of this section or to have committed misfeasance or malfeasance in the performance of his or her duties as an individual provider. The individual provider or prospective individual provider, or the consumer to which the individual provider is providing services, may request a fair hearing to contest the removal from the referral registry, as provided in chapter 34.05 RCW.

(3) The department shall provide routine, emergency, and respite referrals of individual providers and prospective individual providers to consumers and prospective consumers who are authorized to receive long-term in-home care services through an individual provider.

(4) The department shall give preference in the recruiting, training, referral, and employment of individual providers and prospective individual providers to recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment.

**Sec. 709.** 2012 c 1 s 201 (uncodified) (Initiative Measure No. 1163) is amended to read as follows:

The state auditor shall conduct performance audits of the long-term in-home care program. The first audit must be completed within twelve months after January 7, 2012, and must be completed on a ~~((biannual))~~ biennial basis thereafter. As part of this auditing process, the state shall hire five additional fraud investigators to ensure that clients receiving services at taxpayers' expense are medically and financially qualified to receive the services and are actually receiving the services.

**Sec. 710.** 2012 c 1 s 303 (uncodified) (Initiative Measure No. 1163) is amended to read as follows:

Notwithstanding any action of the legislature during 2011, all long-term care workers as defined under RCW 74.39A.009(16), as it existed on April 1, 2011, are covered by sections 101 through 113 of this act or by the corresponding original versions of the statutes, as referenced in section 302 (1) through (13) on the schedules set forth in those sections, as amended by chapter . . . Laws of 2012 (this act), except that long-term care workers employed ((as)) by community residential service ((providers are covered by sections 101 through 113 of this act beginning January 1, 2016)) businesses are exempt to the extent provided in RCW 18.88B.041, 74.39A.056, 74.39A.074, 74.39A.331, 74.39A.341, and 74.39A.351.

**NEW SECTION. Sec. 711.** 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."

Senator Keiser spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care to Engrossed Substitute House Bill No. 2314.

The motion by Senator Keiser carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 7 of the title, after "requirements;" strike the remainder of the title and insert "amending RCW 18.88B.010, 74.39A.009, 18.88B.021, 18.88B.041, 18.88B.031, 74.39A.074, 74.39A.076, 74.39A.331, 74.39A.351, 74.39A.341, 18.79.260, 74.39A.261, 74.39A.056, 18.20.125, 43.20A.710, 43.43.837, 18.88B.050, 74.39A.086, 74.39A.051, 18.20.270, 70.128.120, 70.128.130, 70.128.230, 74.39A.010, 74.39A.020, and 74.39A.250; amending 2012 c 1 ss 201 and 303 (uncodified); reenacting and amending RCW 74.39A.095; adding new sections to chapter 18.88B RCW; creating new sections; and declaring an emergency."

#### MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute House Bill No. 2314 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Becker spoke in favor of passage of the bill.

#### MOTION

On motion of Senator Hatfield, Senator Hobbs was excused.

#### MOTION

On motion of Senator Schoesler, Senator Roach was excused.

#### MOTION

On motion of Senator Holmquist Newbry, Senators Benton and Ericksen were excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2314 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2314 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist Newbry and Honeyford  
Excused: Senators Ericksen and Roach

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2314 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2692, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Orwall, Asay, Parker, Carlyle, Kelley, Hurst, Ormsby, Kagi, Dickerson, Upthegrove, Goodman, Pettigrew, Maxwell, Dahlquist, Dammeier, Moscoso, Pearson and Kenney)

Concerning the reduction of the commercial sale of sex.

The measure was read the second time.

#### MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Judiciary be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.88.120 and 2007 c 368 s 12 are each amended to read as follows:

(1)(a) In addition to penalties set forth in RCW 9A.88.010, 9A.88.030, and 9A.88.090, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.010, 9A.88.030, 9A.88.090, or comparable county or municipal ordinances shall be assessed a fifty dollar fee.

(b)(i) In addition to penalties set forth in RCW 9A.88.110, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.110 or a comparable county or municipal ordinance shall be assessed a ~~((one hundred fifty dollar))~~ fee in the amount of:

(A) One thousand five hundred dollars for the first offense;

(B) Two thousand five hundred dollars for the second offense;  
and

(C) Five thousand dollars for the third and each subsequent offense.

(ii) The court shall not reduce, waive, or suspend payment of all or part of the assessed fees in this section unless it finds, on the record, that the offender does not have the ability to pay the fees, in which case it may reduce the fees by an amount up to two-thirds of the maximum allowable fees.

(iii) Fees assessed under this subsection (1)(b) shall be collected by the clerk of court and be remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increased enforcement of commercial sex laws.

(A) At least fifty percent of the revenue from fees imposed under this subsection (1)(b) must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(B) Revenues from these fees are not subject to the distribution

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requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(c) In addition to penalties set forth in RCW 9A.88.070 and 9A.88.080, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.070, 9A.88.080, or comparable county or municipal ordinances shall be assessed a three hundred dollar fee.

(2) The court may not suspend payment of all or part of the fee unless it finds that the person does not have the ability to pay.

(3) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation under this chapter or comparable county or municipal ordinances, the court shall assess the fee as specified under subsection (1) of this section. The court may not suspend payment of all or part of the fee unless it finds that the minor does not have the ability to pay the fee.

(4) Any fee assessed under this section shall be collected by the clerk of the court and distributed each month to the state treasurer for deposit in the prostitution prevention and intervention account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention activities.

(5) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county, or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation.

**Sec. 2.** RCW 9A.88.130 and 1999 c 327 s 2 are each amended to read as follows:

(1) When sentencing or imposing conditions on a person convicted of, or receiving a deferred sentence or deferred prosecution for, violating RCW 9A.88.110 or 9.68A.100, the court must impose a requirement that the offender:

(a) Not be subsequently arrested for patronizing a prostitute or ~~((patronizing a juvenile prostitute))~~ commercial sexual abuse of a minor; (and)

(b) Remain outside the geographical area, prescribed by the court, in which the person was arrested for violating RCW 9A.88.110 or 9.68A.100, unless such a requirement would interfere with the person's legitimate employment or residence or otherwise be infeasible; and

(c) Fulfill the terms of a program, if a first-time offender, designated by the sentencing court, designed to educate offenders about the negative costs of prostitution.

(2) This requirement is in addition to the penalties set forth in RCW 9A.88.110, 9A.88.120, and 9.68A.100.

**Sec. 3.** RCW 3.50.100 and 2009 c 479 s 3 are each amended to read as follows:

(1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other noninterest revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or deposited in such other funds as may be designated by the laws of the state of Washington.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for

parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

**Sec. 4.** RCW 3.62.020 and 2011 1st sp.s. c 44 s 1 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except costs, fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the state auditor, noting the information necessary for crediting of such funds as required by law.

(2) Except as provided in RCW 9A.88.120, 10.99.080, and this section, the county treasurer shall remit thirty-two percent of the noninterest money received under subsection (1) of this section except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. With the exception of funds to be transferred to the judicial stabilization trust account under RCW 3.62.060(2), money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund. Funds deposited under this subsection that are attributable to the county's portion of a surcharge imposed under RCW 3.62.060(2) must be used to support local trial court and court-related functions.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

**Sec. 5.** RCW 3.62.040 and 2009 c 479 s 6 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fines, forfeitures and penalties assessed and collected, in whole or in part, by district courts because of violations of city ordinances shall be remitted by the clerk of the district court at least monthly directly to the treasurer of the city wherein the violation occurred.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs, to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) All money collected for city parking infractions shall be remitted by the clerk of the district court at least monthly to the city treasurer for deposit in the city's general fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

**Sec. 6.** RCW 10.82.070 and 2009 c 479 s 13 are each amended to read as follows:

(1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit in the state general fund and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of

defense counsel. Costs or assessments awarded to dedicated accounts, state or local, are not subject to this state allocation or to RCW 7.68.035.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed.

**Sec. 7.** RCW 35.20.220 and 2009 c 479 s 19 are each amended to read as follows:

(1) The chief clerk, under the supervision and direction of the court administrator of the municipal court, shall have the custody and care of the books, papers and records of the court. The chief clerk or a deputy shall be present during the session of the court and has the power to swear all witnesses and jurors, administer oaths and affidavits, and take acknowledgments. The chief clerk shall keep the records of the court and shall issue all process under his or her hand and the seal of the court. The chief clerk shall do and perform all things and have the same powers pertaining to the office as the clerks of the superior courts have in their office. He or she shall receive all fines, penalties, and fees of every kind and keep a full, accurate, and detailed account of the same. The chief clerk shall on each day pay into the city treasury all money received for the city during the day previous, with a detailed account of the same, and taking the treasurer's receipt therefor.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts."

Senator Kline spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary to Engrossed Substitute House Bill No. 2692.

The motion by Senator Kline carried and the committee striking amendment was adopted by voice vote.

MOTION

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There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "sex;" strike the remainder of the title and insert "amending RCW 9A.88.120, 9A.88.130, 3.50.100, 3.62.020, 3.62.040, 10.82.070, and 35.20.220; and prescribing penalties."

#### MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 2692 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2692 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2692 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Roach

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2692 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2048, by House Committee on Ways & Means (originally sponsored by Representatives Kenney, Darneille, Dunshee, Hasegawa, Green, Upthegrove, Ormsby, Haigh, McCoy, Pedersen, Ryu, Pettigrew, Ladenburg, Moscoso, Hunt, Kagi, Dickerson, Appleton, Sells, Roberts, Reykdal, Frockt, Fitzgibbon, Finn, Goodman and Rolfes)

Concerning low-income and homeless housing assistance surcharges.

The measure was read the second time.

#### MOTION

Senator Hobbs moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 36.22.179 and 2011 c 110 s 2 are each amended to read as follows:

(1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2) of this section, an additional surcharge of ten dollars shall be charged by the county

auditor for each document recorded, which will be in addition to any other charge allowed by law. ~~((During the 2009-11 and 2011-13 biennia))~~ From July 1, 2009, through August 31, 2012, and from July 1, 2015, through June 30, 2017, the surcharge shall be thirty dollars. From September 1, 2012, through June 30, 2015, the surcharge shall be forty dollars. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. The remaining eighty-seven and one-half percent is to be used by the department to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section applies to documents required to be recorded or filed under RCW 65.04.030(1) including, but not limited to: Full reconveyance; deeds of trust; deeds; liens related to real property; release of liens related to real property; notice of trustee sales; judgments related to real property; and all other documents pertaining to real property as determined by the department. However, the surcharge does not apply to (a) assignments or substitutions of previously recorded deeds of trust, or (b) documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law.

(3) By August 31, 2012, the department shall submit to each county auditor a list of documents that are subject to the surcharge established in subsection (1) of this section.

(4) If section 2, chapter . . . , Laws of 2012 (section 2 of this act) is not enacted into law by July 31, 2012, section 1, chapter . . . , Laws of 2012 (section 1 of this act) is null and void.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.185C RCW to read as follows:

(1) As a means of efficiently and cost-effectively providing housing assistance to very-low income and homeless households:

(a) Any local government that has the authority to issue housing vouchers, directly or through a contractor, using document

recording surcharge funds collected pursuant to RCW 36.22.178, 36.22.179, or 36.22.1791 must:

(i)(A) Maintain an interested landlord list, which at a minimum, includes information on rental properties in buildings with fewer than fifty units;

(B) Update the list at least once per quarter;

(C) Distribute the list to agencies providing services to individuals and households receiving housing vouchers;

(D) Ensure that a copy of the list or information for accessing the list online is provided with voucher paperwork; and

(E) Use reasonable best efforts to communicate and interact with landlord and tenant associations located within its jurisdiction to facilitate development, maintenance, and distribution of the list;

(ii) Using cost-effective methods of communication, convene, on a semiannual or more frequent basis, landlords represented on the interested landlord list and agencies providing services to individuals and households receiving housing vouchers to identify successes, barriers, and process improvements. The local government is not required to reimburse any participants for expenses related to attendance;

(iii) Produce data, limited to document recording fee uses and expenditures, on a calendar year basis in consultation with landlords represented on the interested landlord list and agencies providing services to individuals and households receiving housing vouchers, that include the following: Total amount expended from document recording fees; amount expended on, number of households that received, and number of housing vouchers issued in each of the private, public, and nonprofit markets; amount expended on, number of households that received, and number of housing placement payments provided in each of the private, public, and nonprofit markets; amount expended on and number of eviction prevention services provided in the private market; and amount expended on and number of other tenant-based rent assistance services provided in the private market. If these data elements are not readily available, the reporting government may request the department to use the sampling methodology established pursuant to (c)(iii) of this subsection to obtain the data; and

(iv) Annually submit the calendar year data to the department by October 1st, with preliminary data submitted by October 1, 2012, and full calendar year data submitted beginning October 1, 2013.

(b) Any local government receiving more than three million five hundred thousand dollars during the previous calendar year from document recording surcharge funds collected pursuant to RCW 36.22.178, 36.22.179, and 36.22.1791, must apply to the Washington state quality award program, or similar Baldrige assessment organization, for an independent assessment of its quality management, accountability, and performance system. The first assessment may be a lite assessment. After submitting an application, a local government is required to reapply at least every two years.

(c) The department must:

(i) Require contractors that provide housing vouchers to distribute the interested landlord list created by the appropriate local government to individuals and households receiving the housing vouchers;

(ii) Using cost-effective methods of communication, annually convene local governments issuing housing vouchers, landlord association representatives, and agencies providing services to individuals and households receiving housing vouchers to identify successes, barriers, and process improvements. The department is not required to reimburse any participants for expenses related to attendance;

(iii) Develop a sampling methodology to obtain data required under this section when a local government or contractor does not have such information readily available. The process for developing the sampling methodology must include providing

notification to and the opportunity for public comment by local governments issuing housing vouchers, landlord association representatives, and agencies providing services to individuals and households receiving housing vouchers;

(iv) Develop a report, limited to document recording fee uses and expenditures, on a calendar year basis in consultation with local governments, landlord association representatives, and agencies providing services to individuals and households receiving housing vouchers, that includes the following: Total amount expended from document recording fees; amount expended on, number of households that received, and number of housing vouchers issued in each of the private, public, and nonprofit markets; amount expended on, number of households that received, and number of housing placement payments provided in each of the private, public, and nonprofit markets; amount expended on and number of eviction prevention services provided in the private market; and amount expended on and number of other tenant-based rent assistance services provided in the private market. The information in the report must include data submitted by local governments and data on all additional document recording fee activities for which the department contracted that were not otherwise reported;

(v) Annually submit the calendar year report to the legislature by December 15th, with a preliminary report submitted by December 15, 2012, and full calendar year reports submitted beginning December 15, 2013; and

(vi) Work with the Washington state quality award program, local governments, and any other organizations to ensure the appropriate scheduling of assessments for all local governments meeting the criteria described in subsection (1)(b) of this section.

(2) For purposes of this section:

(a) "Housing placement payments" means one-time payments, such as first and last month's rent and move-in costs, funded by document recording surcharges collected pursuant to RCW 36.22.178, 36.22.179, or 36.22.1791 that are made to secure a unit on behalf of a tenant.

(b) "Housing vouchers" means payments funded by document recording surcharges collected pursuant to RCW 36.22.178, 36.22.179, or 36.22.1791 that are made by a local government or contractor to secure: (i) A rental unit on behalf of an individual tenant; or (ii) a block of units on behalf of multiple tenants.

(c) "Interested landlord list" means a list of landlords who have indicated to a local government or contractor interest in renting to individuals or households receiving a housing voucher funded by document recording surcharges.

(3) This section expires June 30, 2017.

(4) If section 1, chapter . . . , Laws of 2012 (section 1 of this act) is not enacted into law by July 31, 2012, this section is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Engrossed Substitute House Bill No. 2048.

The motion by Senator Hobbs carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "surcharges;" strike the remainder of the title and insert "amending RCW 36.22.179; adding a new section to chapter 43.185C RCW; and providing an expiration date."

#### MOTION

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BARBARA BAKER, Chief Clerk

On motion of Senator Hobbs, the rules were suspended, Engrossed Substitute House Bill No. 2048 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hobbs, Benton and Kohl-Welles spoke in favor of passage of the bill.

Senators Honeyford, Sheldon, Ericksen and Schoesler spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2048 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2048 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 30; Nays, 18; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Brown, Chase, Conway, Eide, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Parlette, Prentice, Pridemore, Ranker, Regala, Rolfes and Shin

Voting nay: Senators Baumgartner, Becker, Carrell, Delvin, Ericksen, Hewitt, Holmquist Newbry, Honeyford, King, Morton, Padden, Pflug, Schoesler, Sheldon, Stevens, Swecker, Tom and Zarelli

Excused: Senator Roach

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2048 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, Rule 15 was suspended for the remainder of the day for the purpose of allowing continued floor action.

EDITOR'S NOTE: Senate Rule 15 establishes the floor schedule and calls for a lunch and dinner break of 90 minutes each per day during regular daily sessions.

MOTION

At 5:36 p.m., on motion of Senator Eide, the Senate recessed until 6:30 p.m.

The Senate was called to order at 6:30 p.m. by President Owen.

MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

MESSAGE FROM THE HOUSE

February 29, 2012

MR. PRESIDENT:

The House has passed:

SUBSTITUTE SENATE BILL NO. 5984.

and the same is herewith transmitted.

SIGNED BY THE PRESIDENT

The President signed:

SUBSTITUTE SENATE BILL NO. 5984.

MESSAGE FROM THE HOUSE

February 29, 2012

MR. PRESIDENT:

The Speaker has signed:

SUBSTITUTE SENATE BILL NO. 5984.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2188, by House Committee on Business & Financial Services (originally sponsored by Representatives Ryu and Parker)

Regulating air rescue or evacuation services.

The measure was read the second time.

MOTION

On motion of Senator Hobbs, the rules were suspended, Substitute House Bill No. 2188 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hobbs spoke in favor of passage of the bill.

MOTION

On motion of Senator Delvin, Senators Ericksen and Roach were excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2188.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2188 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 2; Excused, 2.

Voting yea: Senators Baumgartner, Becker, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Stevens, Swecker, Tom and Zarelli

Absent: Senators Benton and Shin

Excused: Senators Ericksen and Roach

SUBSTITUTE HOUSE BILL NO. 2188, having received the constitutional majority, was declared passed. There being no

objection, the title of the bill was ordered to stand as the title of the act.

### MOTION

On motion of Senator Fain, Senator Benton was excused.

### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1983, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Parker, Kenney, McCune, Hunt, Johnson, Pearson, Ryu, Fagan and Nealey)

Increasing fee assessments for prostitution crimes.

The measure was read the second time.

### MOTION

Senator Regala moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.40.100 and 2011 c 111 s 1 are each amended to read as follows:

(1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, transfers, provides, obtains, or receives 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, involuntary servitude, or a commercial sex act; 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;

(C) Involve the illegal harvesting or sale of human organs; or

(D) 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, transfers, provides, obtains, or receives 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, involuntary servitude, or a commercial sex act; 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.

(3)(a) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a three thousand dollar fee.

(b) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) Fees assessed under this section shall be collected by the

clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(i) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as job school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(ii) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

**Sec. 2.** RCW 9A.44.128 and 2011 c 337 s 2 are each amended to read as follows:

For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Conviction" means any adult conviction or juvenile adjudication for a sex offense or kidnapping offense.

(3) "Disqualifying offense" means a conviction for: Any offense that is a felony; a sex offense as defined in this section; a crime against children or persons as defined in RCW 43.43.830(5) and 9.94A.411(2)(a); an offense with a domestic violence designation as provided in RCW 10.99.020; permitting the commercial sexual abuse of a minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88 RCW.

(4) "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.

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

(6) "In the community" means residing outside of confinement or incarceration for a disqualifying offense.

(7) "Institution of higher education" means any public or private institution dedicated to postsecondary education, including any college, university, community college, trade, or professional school.

(8) "Kidnapping offense" means:

(a) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in

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chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent;

(b) 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; and

(c) Any federal or out-of-state conviction for: An offense for which the person would be required to register as a kidnapping offender if residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a kidnapping offense under this subsection.

(9) "Lacks a fixed residence" means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

(10) "Sex offense" means:

(a) Any offense defined as a sex offense by RCW 9.94A.030;

(b) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(c) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(d) A violation under RCW 9A.88.070 (promoting prostitution in the first degree) or RCW 9A.88.080 (promoting prostitution in the second degree) if the person has a prior conviction for one of these offenses;

(e) 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;

~~((e))~~ (f) Any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection;

~~((f))~~ (g) Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA);

~~((g))~~ (h) Any military conviction for a sex offense. This includes sex offenses under the uniform code of military justice, as specified by the United States secretary of defense;

~~((h))~~ (i) Any conviction in a foreign country for a sex offense if it was obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established pursuant to 42 U.S.C. Sec. 16912.

(11) "School" means a public or private school regulated under Title 28A RCW or chapter 72.40 RCW.

(12) "Student" means a person who is enrolled, on a full-time or part-time basis, in any school or institution of higher education.

**Sec. 3.** RCW 9A.88.120 and 2007 c 368 s 12 are each amended to read as follows:

(1)(a) In addition to penalties set forth in RCW 9A.88.010(~~(c))~~ and 9A.88.030(~~(c), and 9A.88.090~~), a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.010, 9A.88.030, (~~9A.88.090~~) or comparable county or municipal ordinances shall be assessed a fifty dollar fee.

(b) In addition to penalties set forth in RCW 9A.88.090, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.090 or comparable county or municipal ordinances shall be assessed a fee in the amount of:

(i) One thousand five hundred dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense;

(ii) Two thousand five hundred dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Five thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

(c) In addition to penalties set forth in RCW 9A.88.110, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.110 or a comparable county or municipal ordinance shall be assessed a (~~one hundred fifty dollar~~) fee in the amount of:

(i) One thousand five hundred dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense;

(ii) Two thousand five hundred dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Five thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

~~((e))~~ (d) In addition to penalties set forth in RCW 9A.88.070 and 9A.88.080, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.070, 9A.88.080, or comparable county or municipal ordinances shall be assessed a (~~three hundred dollar~~) fee in the amount of:

(i) Three thousand dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense;

(ii) Six thousand dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Ten thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

(2) ((The court may not suspend payment of all or part of the fee unless it finds that the person does not have the ability to pay.

(3)) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation under this chapter or comparable county or municipal ordinances, the court shall assess the fee as specified under subsection (1) of this section. ((The court may not suspend payment of all or part of the fee unless it finds that the minor does not have the ability to pay the fee.

(4) Any fee assessed under this section shall be collected by the clerk of the court and distributed each month to the state treasurer for deposit in the prostitution prevention and intervention account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention activities.)

(3) The court shall not reduce, waive, or suspend payment of all or part of the assessed fee in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(4) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides

for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(a) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(b) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(5) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county, or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation.

**Sec. 4.** RCW 9.68A.105 and 2010 c 289 s 15 are each amended to read as follows:

(1)(a) In addition to penalties set forth in RCW 9.68A.100, 9.68A.101, and 9.68A.102, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance shall be assessed a five thousand dollar fee.

(b) The court may not reduce, waive, or suspend payment of all or part of the fee assessed unless it finds, on the record, that the person does not have the ability to pay in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation of RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance, the court shall assess the fee under (a) of this subsection. The court may not reduce, waive, or suspend payment of all or part of the fee assessed unless it finds, on the record, that the minor does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(2) ((The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and distributed each month to the state treasurer for deposit in the prostitution prevention and intervention account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention activities.)) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(a) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational

training, drop-in centers, and employment counseling.

(b) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(3) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation.

**Sec. 5.** RCW 3.50.100 and 2009 c 479 s 3 are each amended to read as follows:

(1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other noninterest revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or deposited in such other funds as may be designated by the laws of the state of Washington.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

**Sec. 6.** RCW 3.62.020 and 2011 1st sp.s. c 44 s 1 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except costs, fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the state auditor, noting the information necessary for crediting of such funds as required by law.

(2) Except as provided in RCW 9A.88.120, 10.99.080, and this section, the county treasurer shall remit thirty-two percent of the noninterest money received under subsection (1) of this section

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except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. With the exception of funds to be transferred to the judicial stabilization trust account under RCW 3.62.060(2), money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund. Funds deposited under this subsection that are attributable to the county's portion of a surcharge imposed under RCW 3.62.060(2) must be used to support local trial court and court-related functions.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

**Sec. 7.** RCW 3.62.040 and 2009 c 479 s 6 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fines, forfeitures and penalties assessed and collected, in whole or in part, by district courts because of violations of city ordinances shall be remitted by the clerk of the district court at least monthly directly to the treasurer of the city wherein the violation occurred.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs, to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) All money collected for city parking infractions shall be remitted by the clerk of the district court at least monthly to the city treasurer for deposit in the city's general fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

**Sec. 8.** RCW 10.82.070 and 2009 c 479 s 13 are each amended to read as follows:

(1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit in the state general fund and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Costs or assessments awarded to dedicated accounts, state or local, are not subject to this state allocation or to RCW 7.68.035.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed.

**Sec. 9.** RCW 35.20.220 and 2009 c 479 s 19 are each amended to read as follows:

(1) The chief clerk, under the supervision and direction of the court administrator of the municipal court, shall have the custody and care of the books, papers and records of the court. The chief clerk or a deputy shall be present during the session of the court and has the power to swear all witnesses and jurors, administer oaths and affidavits, and take acknowledgments. The chief clerk shall keep the records of the court and shall issue all process under his or her hand and the seal of the court. The chief clerk shall do and perform all things and have the same powers pertaining to the office as the clerks of the superior courts have in their office. He or she shall receive all fines, penalties, and fees of every kind and keep a full, accurate, and detailed account of the same. The chief clerk shall on each day pay into the city treasury all money received for the city during the day previous, with a detailed account of the same, and taking the treasurer's receipt therefor.

(2) Except as provided in RCW 9A.88.120 and 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs

incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Engrossed Substitute House Bill No. 1983.

The motion by Senator Regala carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "prostitution" strike the remainder of the title and insert "and trafficking crimes and requiring sex offender registration for second and subsequent convictions of promoting prostitution in the first or second degree; amending RCW 9A.40.100, 9A.44.128, 9A.88.120, 9.68A.105, 3.50.100, 3.62.020, 3.62.040, 10.82.070, and 35.20.220; and prescribing penalties."

#### MOTION

On motion of Senator Regala, the rules were suspended, Engrossed Substitute House Bill No. 1983 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Regala and Stevens spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1983 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1983 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Roach

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1983 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

At 6:49 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 6:58 p.m. by President Owen.

#### SECOND READING

HOUSE BILL NO. 2346, by Representatives Walsh, Reykdal, Pearson, Hurst, Kristiansen, Nealey, McCune, Appleton, Orwall, Moscoso, Goodman, DeBolt, Rivers, Shea, Armstrong, Maxwell, Johnson, Springer, Darneille, Sells, Fitzgibbon, Eddy, Angel, Upthegrove, Kelley, Ryu, Stanford, Hudgins, Seaquist and Ormsby

Removing the requirement that correctional officers of the department of corrections purchase uniforms from correctional industries.

The measure was read the second time.

#### MOTION

Senator Regala moved that the following committee striking amendment by the Committee on Human Services & Corrections be not adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.19.534 and 2011 1st sp.s. c 43 s 227 and 2011 c 367 s 707 are each reenacted and amended to read as follows:

(1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any other source unless, upon application by the department or agency: (a) The department finds that the articles or products do not meet the reasonable requirements of the agency or department, (b) are not of equal or better quality, or (c) the price of the product or service is higher than that produced by the private sector. However, the criteria contained in (a), (b), and (c) of this subsection for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department shall adopt administrative rules that implement this section.

(2) During the 2009-2011 and 2011-2013 fiscal biennia, and in conformance with section 223(11), chapter 470, Laws of 2009 and section 221(2), chapter 367, Laws of 2011, this section does not apply to the purchase of uniforms by the Washington state ferries.

(3) Effective July 1, 2012, this section does not apply to the purchase of uniforms by the Washington state department of corrections or its employees.

**Sec. 2.** RCW 72.09.100 and 2011 1st sp.s. c 21 s 37 and 2011 c 100 s 1 are each reenacted and amended to read as follows:

It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work

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programs in the past. It is also the intent of the legislature to ensure that the department, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the department to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The department shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed primarily to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b)(i) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

(ii) Except as provided in RCW 43.19.534(3) and this section, the products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to the following:

(A) Public agencies;

(B) Nonprofit organizations;

(C) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization;

(D) An employee and immediate family members of an employee of the department;

(E) A person under the supervision of the department and his or her immediate family members; and

(F) A licensed health professional for the sole purpose of providing eyeglasses to enrollees of the state medical program at no more than the health professional's cost of acquisition.

(iii) The department shall authorize the type and quantity of items that may be purchased and sold under (b)(ii)(D) and (E) of this subsection.

(iv) It is prohibited to purchase any item purchased under (b)(ii)(D) and (E) of this subsection for the purpose of resale.

(v) Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c) Under no circumstance shall offenders under the custody of the department of corrections make or assemble uniforms to be worn by department of corrections personnel.

(d)(i) Class II correctional industries products and services shall be reviewed by the department before offering such products and services for sale to private contractors.

(ii) The secretary shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, by-products and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus by-products and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

~~((d))~~ (e) Security and custody services shall be provided without charge by the department.

~~((e))~~ (f) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

~~((f))~~ (g) Provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the department to set policy for work crews. The department shall prepare quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

**(4) CLASS IV: COMMUNITY WORK INDUSTRIES.**

(a) Industries in this class shall be operated by the department. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the department to set policy for work crews. The department shall prepare quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

**(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.**

(a) Programs in this class shall be subject to supervision by the department. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department shall reimburse nonprofit agencies for workers compensation insurance costs.

**NEW SECTION. Sec. 3.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2012, in the omnibus appropriations act, this act is null and void."

On page 1, line 3 of the title, after "industries;" strike the remainder of the title and insert "reenacting and amending RCW 43.19.534 and 72.09.100; and creating a new section."

The President declared the question before the Senate to be the motion by Senator Regala to not adopt the committee striking amendment by the Committee on Human Services & Corrections to House Bill No. 2346.

The motion by Senator Regala carried and the committee striking amendment was not adopted by voice vote.

**MOTION**

Senator Regala moved that the following striking amendment by Senators Regala and Hewitt be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.19.534 and 2011 1st sp.s. c 43 s 227 and 2011 c 367 s 707 are each reenacted and amended to read as follows:

(1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the

legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any other source unless, upon application by the department or agency: (a) The department finds that the articles or products do not meet the reasonable requirements of the agency or department, (b) are not of equal or better quality, or (c) the price of the product or service is higher than that produced by the private sector. However, the criteria contained in (a), (b), and (c) of this subsection for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department shall adopt administrative rules that implement this section.

(2) During the 2009-2011 and 2011-2013 fiscal biennia, and in conformance with section 223(11), chapter 470, Laws of 2009 and section 221(2), chapter 367, Laws of 2011, this section does not apply to the purchase of uniforms by the Washington state ferries.

(3) Effective July 1, 2012, this section does not apply to the purchase of uniforms for correctional officers employed with the Washington state department of corrections.

**Sec. 2.** RCW 72.09.100 and 2011 1st sp.s. c 21 s 37 and 2011 c 100 s 1 are each reenacted and amended to read as follows:

It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the department, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the department to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

**(1) CLASS I: FREE VENTURE INDUSTRIES.**

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The department shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the

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industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed primarily to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b)(i) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

(ii) Except as provided in RCW 43.19.534(3) and this section, the products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to the following:

(A) Public agencies;

(B) Nonprofit organizations;

(C) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization;

(D) An employee and immediate family members of an employee of the department;

(E) A person under the supervision of the department and his or her immediate family members; and

(F) A licensed health professional for the sole purpose of providing eyeglasses to enrollees of the state medical program at no more than the health professional's cost of acquisition.

(iii) The department shall authorize the type and quantity of items that may be purchased and sold under (b)(ii)(D) and (E) of this subsection.

(iv) It is prohibited to purchase any item purchased under (b)(ii)(D) and (E) of this subsection for the purpose of resale.

(v) Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c) Under no circumstance shall offenders under the custody of the department of corrections make or assemble uniforms to be worn by correctional officers employed with the department.

(d)(i) Class II correctional industries products and services shall be reviewed by the department before offering such products and services for sale to private contractors.

(ii) The secretary shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, by-products and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus by-products and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

~~((f))~~ (e) Security and custody services shall be provided without charge by the department.

~~((g))~~ (f) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar

nature in the locality in which the industry is located and which is approved by the director of correctional industries.

~~((h))~~ (g) Provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the department to set policy for work crews. The department shall prepare quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the department to set policy for work crews. The department shall prepare quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department shall reimburse nonprofit agencies for workers compensation insurance costs.

**NEW SECTION. Sec. 3.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2012, in the omnibus appropriations act, this act is null and void."

Senator Regala spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Regala and Hewitt to House Bill No. 2346.

The motion by Senator Regala carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "industries;" strike the remainder of the title and insert "reenacting and amending RCW 43.19.534 and 72.09.100; and creating a new section."

#### MOTION

On motion of Senator Hewitt, the rules were suspended, House Bill No. 2346 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hewitt spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2346 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2346 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 3; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist Newbry, Honeyford and Regala

Excused: Senator Roach

HOUSE BILL NO. 2346 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2354, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Orwall, Asay, Hurst, Upthegrove, Armstrong, Ladenburg and Kenney)

Adding trafficking in stolen property in the first and second degrees to the six-year statute of limitations provisions.

The measure was read the second time.

#### MOTION

On motion of Senator Kline, the rules were suspended, Substitute House Bill No. 2354 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2354.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2354 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Pridemore

Excused: Senator Roach

SUBSTITUTE HOUSE BILL NO. 2354, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2473, by House Committee on Health Care & Wellness (originally sponsored by Representatives Green, Hinkle, Johnson, Van De Wege, Ryu and Roberts)

Creating a medication assistant endorsement for certified nursing assistants who work in nursing homes.

The measure was read the second time.

#### MOTION

Senator Keiser moved that the following committee amendment by the Committee on Human Services & Corrections be adopted:

On page 1, after line 7, insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature finds that many residents of skilled nursing facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are often the key to good care and the need for well-trained caregivers with diverse skill sets is growing as the state's population ages and residents' needs increase.

(2) The legislature further finds that the evidence-based practice of allowing nursing assistants certified to administer certain medications and treatments promotes quality and safety for residents in skilled nursing facilities, and that creating opportunities for career advancement and pay improvement through additional training and credentialing will help enhance the working environment for nursing assistants certified in skilled nursing facilities.

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(3) The legislature further finds that creating continued opportunities for recruitment into nursing practice and career advancement for nursing assistants certified will help ensure quality care for residents, and nurse training programs should recognize the relevant training and experience obtained by these credentialed professionals."

Renumber the remaining sections consecutively and correct any internal references accordingly.

The President declared the question before the Senate to be the adoption of the committee amendment by the Committee on Human Services & Corrections to Engrossed Substitute House Bill No. 2473.

The motion by Senator Keiser carried and the committee amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 5 of the title, after "RCW;" strike "creating a new section" and insert "creating new sections"

#### MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute House Bill No. 2473 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Becker spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2473 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2473 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 44; Nays, 4; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Ericksen, Holmquist Newbry, Honeyford and Stevens

Excused: Senator Roach

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2473 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2363, by House Committee on Judiciary (originally sponsored by Representatives Goodman, Kenney, Orwall, Darneille, Ryu, Roberts, Appleton, Dickerson, Ladenburg, Reykdal, Jinkins, Santos and Kagi)

Protecting victims of domestic violence and harassment.

The measure was read the second time.

#### MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be not adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.46.040 and 2011 c 307 s 4 are each amended to read as follows:

(1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) (~~An intentional~~) Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW. A certified copy of the order shall be provided to the victim by the clerk of the court.

**Sec. 2.** RCW 9A.46.080 and 2011 c 307 s 5 are each amended to read as follows:

The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest.

**Sec. 3.** RCW 10.99.040 and 2010 c 274 s 309 are each amended to read as follows:

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic

violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9A.14.060.

(c) The no-contact order shall also be issued in writing as soon as possible, and shall state that it may be extended as provided in subsection (3) of this section. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear at arraignment. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2) ~~((6)),~~ (3), or (7) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed. ~~((Such orders need not be entered into the computer based criminal intelligence information system in this state which is used by law enforcement agencies to list outstanding warrants.))~~

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency

shall remove the order from the computer-based criminal intelligence information system.

(7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

NEW SECTION. Sec. 4. A new section is added to chapter 10.14 RCW to read as follows:

(1) A defendant arrested for violating any civil antiharassment protection order issued pursuant to this chapter is required to appear in person before a magistrate within one judicial day after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release in accordance with RCW 9A.46.050.

(2) A defendant who is charged by citation, complaint, or information with violating any civil antiharassment protection order issued pursuant to this chapter and not arrested shall appear in court for arraignment in accordance with RCW 9A.46.050.

(3) Appearances required pursuant to this section are mandatory and cannot be waived.

Sec. 5. RCW 26.09.060 and 2008 c 6 s 1009 are each amended to read as follows:

(1) In a proceeding for:

(a) Dissolution of marriage or domestic partnership, legal separation, or a declaration of invalidity; or

(b) Disposition of property or liabilities, maintenance, or support following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner; either party may move for temporary maintenance or for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

(a) Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained or enjoined, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) Molesting or disturbing the peace of the other party or of any child;

(c) Going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child upon a showing of the necessity therefor;

(d) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and

(e) Removing a child from the jurisdiction of the court.

(3)(a) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(b) In cases in which the court has made a finding of domestic violence or child abuse, the court may not require a victim of domestic violence or the custodial parent of a victim of child abuse to disclose to the other party information that would reasonably be

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expected to enable the perpetrator of domestic violence or child abuse to obtain previously undisclosed information regarding the name, location, or address of a victim's residence, employer, or school during the period of an initial temporary order or after a permanent order has been issued.

(c) In cases in which domestic violence or child abuse has been alleged but the court has not yet made a finding regarding such allegations, the court shall provide the party alleging domestic violence or child abuse with the opportunity to prove the allegations before ordering the disclosure of information that would reasonably be expected to enable the alleged perpetrator of domestic violence or child abuse to obtain previously undisclosed information regarding the name, location, or address of a victim's residence, employer, or school during the period of an initial temporary order or after a permanent order has been issued.

(4) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(5) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(6) The court may issue a temporary restraining order or preliminary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances. The court may in its discretion waive the filing of the bond or the posting of security.

(7) Restraining orders issued under this section restraining the person from molesting or disturbing another party, or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(8) The court shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(9) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

(10) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final decree is entered, except as provided under subsection (11) of this section, or when the petition for dissolution, legal separation, or declaration of invalidity is dismissed;

(d) May be entered in a proceeding for the modification of an existing decree.

(11) Delinquent support payments accrued under an order for temporary support remain collectible and are not extinguished when a final decree is entered unless the decree contains specific language to the contrary. A support debt under a temporary order owed to the state for public assistance expenditures shall not be extinguished by the final decree if:

(a) The obligor was given notice of the state's interest under chapter 74.20A RCW; or

(b) The temporary order directs the obligor to make support payments to the office of support enforcement or the Washington state support registry.

**Sec. 6.** RCW 43.235.040 and 2000 c 50 s 4 are each amended to read as follows:

(1) An oral or written communication or a document shared within or produced by a ((~~regional~~)) domestic violence fatality review panel related to a domestic violence fatality review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a ((~~regional~~)) domestic violence fatality review panel, or between a third party and a ((~~regional~~)) domestic violence fatality review panel is confidential and not subject to disclosure or discovery by a third party. Notwithstanding the foregoing, recommendations from the ((~~regional~~)) domestic violence fatality review panel and the coordinating entity generally may be disclosed minus personal identifiers.

(2) The ((~~regional~~)) review panels, only to the extent otherwise permitted by law or court rule, shall have access to information and records regarding the domestic violence victims and perpetrators under review held by domestic violence perpetrators' treatment providers; dental care providers; hospitals, medical providers, and pathologists; coroners and medical examiners; mental health providers; lawyers; the state and local governments; the courts; and employers. The coordinating entity and the ((~~regional~~)) review panels shall maintain the confidentiality of such information to the extent required by any applicable law.

(3) The ((~~regional~~)) review panels shall review, only to the extent otherwise permitted by law or court rule when determined to be relevant and necessary to an investigation, guardian ad litem reports, parenting evaluations, and victim impact statements; probation information; mental health evaluations done for court; presentence interviews and reports, and any recommendations made regarding bail and release on own recognizance; child protection services, welfare, and other information held by the department; any law enforcement incident documentation, such as incident reports, dispatch records, victim, witness, and suspect statements, and any supplemental reports, probable cause statements, and 911 call taker's reports; corrections and postsentence supervision reports; and any other information determined to be relevant to the review. The coordinating entity and the ((~~regional~~)) review panels shall maintain the confidentiality of such information to the extent required by any applicable law.

**Sec. 7.** RCW 43.235.050 and 2000 c 50 s 5 are each amended to read as follows:

If acting in good faith, without malice, and within the parameters of this chapter and the protocols established, representatives of the coordinating entity and the statewide and regional domestic violence fatality review panels are immune from civil liability for an activity related to reviews of particular fatalities.

**NEW SECTION. Sec. 8.** A new section is added to chapter 26.12 RCW to read as follows:

The court shall act in accordance with the requirements of the address confidentiality program pursuant to chapter 40.24 RCW in the course of all proceedings under this title. A court order for

information protected by the address confidentiality program may only be issued upon completing the requirements of RCW 40.24.075.

**NEW SECTION. Sec. 9.** A new section is added to chapter 26.50 RCW to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, no court or administrative body may compel any person or domestic violence program as defined in RCW 70.123.020 to disclose the name, address, or location of any domestic violence program, including a shelter or transitional housing facility location in any civil or criminal case or in any administrative proceeding.

(2)(a) A court may compel disclosure of the name, address, or location of a domestic violence program only if the court finds, following a hearing, that there is clear and convincing evidence that failure to disclose would be likely to result in an imminent risk of serious bodily harm or death to a domestic violence victim or another person. In a proceeding where the domestic violence program is a party to the proceeding, a court may compel disclosure of the name, address, or location of a domestic violence program if the court finds that such information is necessary and relevant to the facts of the case.

(b) A court may only compel the disclosure of the name, address, or location of a domestic violence program following a written pretrial motion made to a court stating that discovery is requested of the information about the domestic violence program. The written motion must be accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested, and the court shall review the domestic violence program's information in camera to determine whether disclosure is permitted under (a) of this subsection.

(c) In any proceeding where the confidential name, address, or location of a domestic violence program is ordered to be disclosed, the court shall additionally order that the parties be prohibited from further dissemination of the confidential information, and that any portion of any records containing such confidential information be sealed.

(3) Any person who obtains access to and intentionally and maliciously releases confidential information about the location of a domestic violence program for any purpose other than required by a court proceeding is guilty of a gross misdemeanor.

**NEW SECTION. Sec. 10.** A new section is added to chapter 26.50 RCW to read as follows:

(1) The Washington state institute for public policy shall conduct a statewide study to assess recidivism by domestic violence offenders involved in the criminal justice system, examine effective community supervision practices of domestic violence offenders as it relates to Washington state institute for public policy findings on evidence-based community supervision, and assess domestic violence perpetrator treatment. The institute shall report recidivism rates of domestic violence offenders in Washington, and if data is available, the report must also include an estimate of the number of domestic violence offenders sentenced to certified domestic violence perpetrator treatment in Washington state and completion rates for those entering treatment.

(2) The study must be done in collaboration with the Washington state gender and justice commission and experts on domestic violence and must include a review and update of the literature on domestic violence perpetrator treatment, and provide a description of studies used in meta-analysis of domestic violence perpetrator treatment. The institute shall report on other treatments and programs, including related findings on evidence-based community supervision, that are effective at reducing recidivism among the general offender population. The institute shall survey other states to study how misdemeanor and felony domestic violence cases are handled and assess whether domestic violence perpetrator treatment is required by law and whether a treatment

modality is codified in law. The institute shall complete the review and report results to the legislature by January 1, 2013.

**NEW SECTION. Sec. 11.** If specific funding for the purposes of section 10 of this act, referencing section 10 of this act by bill or chapter number and section number, is not provided by June 30, 2012, in the omnibus appropriations act, section 10 of this act is null and void."

On page 1, line 2 of the title, after "harassment;" strike the remainder of the title and insert "amending RCW 9A.46.040, 9A.46.080, 10.99.040, 26.09.060, 43.235.040, and 43.235.050; adding a new section to chapter 10.14 RCW; adding a new section to chapter 26.12 RCW; adding new sections to chapter 26.50 RCW; creating a new section; and prescribing penalties."

The President declared the question before the Senate to be the motion by Senator Hargrove to not adopt the committee striking amendment by the Committee on Human Services & Corrections to Engrossed Substitute House Bill No. 2363.

The motion by Senator Hargrove carried and the committee striking amendment was not adopted by voice vote.

#### MOTION

Senator Hargrove moved that the following striking amendment by Senator Hargrove and others be adopted:

Strike everything after the enacting clause and insert the following:

**"Sec. 1.** RCW 9A.46.040 and 2011 c 307 s 4 are each amended to read as follows:

(1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) ~~((An intentional))~~ **Willful** violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW. A certified copy of the order shall be provided to the victim by the clerk of the court.

**Sec. 2.** RCW 9A.46.080 and 2011 c 307 s 5 are each amended to read as follows:

The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest.

**Sec. 3.** RCW 10.99.040 and 2010 c 274 s 309 are each amended to read as follows:

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(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9A.41.800.

(c) The no-contact order shall also be issued in writing as soon as possible, and shall state that it may be extended as provided in subsection (3) of this section. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear at arraignment. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2) ~~((6))~~, (3), or (7) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if

charges are not filed. ~~((Such orders need not be entered into the computer-based criminal intelligence information system in this state which is used by law enforcement agencies to list outstanding warrants.))~~

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

(7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

NEW SECTION. Sec. 4. A new section is added to chapter 10.14 RCW to read as follows:

(1) A defendant arrested for violating any civil antiharassment protection order issued pursuant to this chapter is required to appear in person before a magistrate within one judicial day after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release in accordance with RCW 9A.46.050.

(2) A defendant who is charged by citation, complaint, or information with violating any civil antiharassment protection order issued pursuant to this chapter and not arrested shall appear in court for arraignment in accordance with RCW 9A.46.050.

(3) Appearances required pursuant to this section are mandatory and cannot be waived.

Sec. 5. RCW 26.09.013 and 2007 c 496 s 401 are each amended to read as follows:

In order to provide judicial officers with better information and to facilitate decision making which allows for the protection of children from physical, mental, or emotional harm and in order to facilitate consistent healthy contact between both parents and their children:

(1) Parties and witnesses who require the assistance of interpreters shall be provided access to qualified interpreters pursuant to chapter 2.42 or 2.43 RCW. To the extent practicable and within available resources, interpreters shall also be made available at dissolution-related proceedings.

(2) Parties and witnesses who require literacy assistance shall be referred to the multipurpose service centers established in chapter 28B.04 RCW.

(3) In matters involving guardians ad litem((s)), the court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional review. Counties may, and to the extent state funding is provided therefor counties shall, provide indigent parties with guardian ad litem services at a reduced or waived fee.

(4) Parties may request to participate by telephone or interactive videoconference. The court may allow telephonic or interactive videoconference participation of one or more parties at any

proceeding in its discretion. The court may also allow telephonic or interactive videoconference participation of witnesses.

(5) In cases involving domestic violence or child abuse, if residential time is ordered, the court may:

(a) Order exchange of a child to occur in a protected setting;

(b) Order residential time supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the supervisor is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor if the court determines, after a hearing, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child. If the court allows a family or household member to supervise residential time, the court shall establish conditions to be followed during residential time.

(6)(a) In cases in which the court has made a finding of domestic violence or child abuse, the court may not require a victim of domestic violence or the custodial parent of a victim of child abuse to disclose to the other party information that would reasonably be expected to enable the perpetrator of domestic violence or child abuse to obtain previously undisclosed information regarding the name, location, or address of a victim's residence, employer, or school at an initial hearing, and shall carefully weigh the safety interests of the victim before issuing orders which would require disclosure in a future hearing.

(b) In cases in which domestic violence or child abuse has been alleged but the court has not yet made a finding regarding such allegations, the court shall provide the party alleging domestic violence or child abuse with the opportunity to prove the allegations before ordering the disclosure of information that would reasonably be expected to enable the alleged perpetrator of domestic violence or child abuse to obtain previously undisclosed information regarding the name, location, or address of a victim's residence, employer, or school.

(7) In cases in which the court finds that the parties do not have a satisfactory history of cooperation or there is a high level of parental conflict, the court may order the parties to use supervised visitation and safe exchange centers or alternative safe locations to facilitate the exercise of residential time.

**Sec. 6.** RCW 43.235.040 and 2000 c 50 s 4 are each amended to read as follows:

(1) An oral or written communication or a document shared within or produced by a ((regional)) domestic violence fatality review panel related to a domestic violence fatality review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a ((regional)) domestic violence fatality review panel, or between a third party and a ((regional)) domestic violence fatality review panel is confidential and not subject to disclosure or discovery by a third party. Notwithstanding the foregoing, recommendations from the ((regional)) domestic violence fatality review panel and the coordinating entity generally may be disclosed minus personal identifiers.

(2) The ((regional)) review panels, only to the extent otherwise permitted by law or court rule, shall have access to information and records regarding the domestic violence victims and perpetrators under review held by domestic violence perpetrators' treatment providers; dental care providers; hospitals, medical providers, and pathologists; coroners and medical examiners; mental health providers; lawyers; the state and local governments; the courts; and employers. The coordinating entity and the ((regional)) review panels shall maintain the confidentiality of such information to the extent required by any applicable law.

(3) The ((regional)) review panels shall review, only to the extent otherwise permitted by law or court rule when determined to

be relevant and necessary to an investigation, guardian ad litem reports, parenting evaluations, and victim impact statements; probation information; mental health evaluations done for court; presentence interviews and reports, and any recommendations made regarding bail and release on own recognizance; child protection services, welfare, and other information held by the department; any law enforcement incident documentation, such as incident reports, dispatch records, victim, witness, and suspect statements, and any supplemental reports, probable cause statements, and 911 call taker's reports; corrections and postsentence supervision reports; and any other information determined to be relevant to the review. The coordinating entity and the ((regional)) review panels shall maintain the confidentiality of such information to the extent required by any applicable law.

**Sec. 7.** RCW 43.235.050 and 2000 c 50 s 5 are each amended to read as follows:

If acting in good faith, without malice, and within the parameters of this chapter and the protocols established, representatives of the coordinating entity and the statewide and regional domestic violence fatality review panels are immune from civil liability for an activity related to reviews of particular fatalities.

**NEW SECTION. Sec. 8.** A new section is added to chapter 26.12 RCW to read as follows:

The court shall act in accordance with the requirements of the address confidentiality program pursuant to chapter 40.24 RCW in the course of all proceedings under this title. A court order for information protected by the address confidentiality program may only be issued upon completing the requirements of RCW 40.24.075.

**NEW SECTION. Sec. 9.** A new section is added to chapter 26.50 RCW to read as follows:

(1)(a) No court or administrative body may compel any person or domestic violence program as defined in RCW 70.123.020 to disclose the name, address, or location of any domestic violence program, including a shelter or transitional housing facility location, in any civil or criminal case or in any administrative proceeding unless the court finds by clear and convincing evidence that disclosure is necessary for the implementation of justice after consideration of safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the interests of the parties.

(b) The court's findings shall be made following a hearing in which the domestic violence program has been provided notice of the request for disclosure and an opportunity to respond.

(2) In any proceeding where the confidential name, address, or location of a domestic violence program is ordered to be disclosed, the court shall order that the parties be prohibited from further dissemination of the confidential information, and that any portion of any records containing such confidential information be sealed.

(3) Any person who obtains access to and intentionally and maliciously releases confidential information about the location of a domestic violence program for any purpose other than required by a court proceeding is guilty of a gross misdemeanor.

**NEW SECTION. Sec. 10.** A new section is added to chapter 26.50 RCW to read as follows:

(1) The Washington state institute for public policy shall conduct a statewide study to assess recidivism by domestic violence offenders involved in the criminal justice system, examine effective community supervision practices of domestic violence offenders as it relates to Washington state institute for public policy findings on evidence-based community supervision, and assess domestic violence perpetrator treatment. The institute shall report recidivism rates of domestic violence offenders in Washington, and if data is available, the report must also include an estimate of the number of domestic violence offenders sentenced to certified domestic

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violence perpetrator treatment in Washington state and completion rates for those entering treatment.

(2) The study must be done in collaboration with the Washington state gender and justice commission and experts on domestic violence and must include a review and update of the literature on domestic violence perpetrator treatment, and provide a description of studies used in meta-analysis of domestic violence perpetrator treatment. The institute shall report on other treatments and programs, including related findings on evidence-based community supervision, that are effective at reducing recidivism among the general offender population. The institute shall survey other states to study how misdemeanor and felony domestic violence cases are handled and assess whether domestic violence perpetrator treatment is required by law and whether a treatment modality is codified in law. The institute shall complete the review and report results to the legislature by January 1, 2013.

NEW SECTION. Sec. 11. If specific funding for the purposes of section 10 of this act, referencing section 10 of this act by bill or chapter number and section number, is not provided by June 30, 2012, in the omnibus appropriations act, section 10 of this act is null and void."

Senator Hargrove spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Hargrove and others to Engrossed Substitute House Bill No. 2363.

The motion by Senator Hargrove carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "harassment;" strike the remainder of the title and insert "amending RCW 9A.46.040, 9A.46.080, 10.99.040, 26.09.013, 43.235.040, and 43.235.050; adding a new section to chapter 10.14 RCW; adding a new section to chapter 26.12 RCW; adding new sections to chapter 26.50 RCW; creating a new section; and prescribing penalties."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Substitute House Bill No. 2363 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2363 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2363 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker,

Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Roach

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2363 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2492, by House Committee on Education Appropriations & Oversight (originally sponsored by Representatives Haigh, Dammeier, Maxwell, Dahlquist, Liias, Finn and Santos)

Requiring the state board of education to provide fiscal impact statements before making rule changes.

The measure was read the second time.

MOTION

On motion of Senator McAuliffe, the rules were suspended, Substitute House Bill No. 2492 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and Litzow spoke in favor of passage of the bill.

Senator Tom spoke on final passage.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2492.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2492 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker and Zarelli

Voting nay: Senator Tom

Excused: Senator Roach

SUBSTITUTE HOUSE BILL NO. 2492, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2337, by House Committee on Ways & Means (originally sponsored by Representatives Carlyle, Orwall, Sullivan, Maxwell, Lytton, Zeiger, Reykdal, Pettigrew, Liias, Dammeier, Fitzgibbon, Pedersen, Hunt and Hudgins)

Regarding open educational resources in K-12 education.

The measure was read the second time.

## MOTION

Senator McAuliffe moved that the following committee striking amendment by the Committee on Early Learning & K-12 Education be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds the state's recent adoption of common core K-12 standards provides an opportunity to develop a library of high-quality, openly licensed K-12 courseware that is aligned with these standards. By developing this library of openly licensed courseware and making it available to school districts free of charge, the state and school districts will be able to provide students with curricula and texts while substantially reducing the expenses that districts would otherwise incur in purchasing these materials. In addition, this library of openly licensed courseware will provide districts and students with a broader selection of materials, and materials that are more up-to-date.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.300 RCW to read as follows:

(1)(a) Subject to availability of amounts appropriated for this specific purpose, the superintendent of public instruction shall take the lead in identifying and developing a library of openly licensed courseware aligned with the common core state standards and placed under an attribution license, registered by a nonprofit or for-profit organization with domain expertise in open courseware, that allows others to use, distribute, and create derivative works based upon the digital material, while still allowing the authors or creators to retain the copyright and to receive credit for their efforts.

(b) During the course of identification and development of a library of openly licensed courseware, the superintendent:

(i) May contract with third parties for all or part of the development;

(ii) May adopt or adapt existing high quality openly licensed K-12 courseware aligned with the common core state standards;

(iii) May consider multiple sources of openly licensed courseware;

(iv) Must use best efforts to seek additional outside funding by actively partnering with private organizations;

(v) Must work collaboratively with other states that have adopted the common core state standards and collectively share results; and

(vi) Must include input from classroom practitioners, including teacher-librarians as defined by RCW 28A.320.240, in the results reported under subsection (2)(d) of this section.

(2) The superintendent of public instruction must also:

(a) Advertise to school districts the availability of openly licensed courseware, with an emphasis on the fact that the courseware is available at no cost to the districts;

(b) Identify an open courseware repository to which openly licensed courseware identified and developed under this section may be submitted, in which openly licensed courseware may be housed, and from which openly licensed courseware may be easily accessed, all at no cost to school districts;

(c) Provide professional development programs that offer support, guidance, and instruction regarding the creation, use, and continuous improvement of open courseware; and

(d) Report to the governor and the education committees of the legislature on a biennial basis, beginning December 1, 2013, and ending December 1, 2017, regarding identification and development of a library of openly licensed courseware aligned with the common core state standards and placed under an attribution license, use by school districts of openly licensed courseware, and professional development programs provided.

(3) School districts may, but are not required to, use any of the openly licensed courseware.

(4) As used in this section, "courseware" includes the course syllabus, scope and sequence, instructional materials, modules, textbooks, including the teacher's edition, student guides, supplemental materials, formative and summative assessment supports, research articles, research data, laboratory activities, simulations, videos, open-ended inquiry activities, and any other educationally useful materials.

(5) The open educational resources account is created in the custody of the state treasurer. All receipts from funds collected under this section must be deposited into the account. Expenditures from the account may be used only for the development of openly licensed courseware as described in this section. Only the superintendent of public instruction or the superintendent'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.

(6) This section expires June 30, 2018."

Senators McAuliffe and Litzow spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Early Learning & K-12 Education to Engrossed Second Substitute House Bill No. 2337.

The motion by Senator McAuliffe carried and the committee striking amendment was adopted by voice vote.

## MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "education;" strike the remainder of the title and insert "adding a new section to chapter 28A.300 RCW; creating a new section; and providing an expiration date."

## MOTION

On motion of Senator McAuliffe, the rules were suspended, Engrossed Second Substitute House Bill No. 2337 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and Tom spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2337 as amended by the Senate.

## ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2337 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Padden

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Excused: Senator Roach

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2337 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

THIRD SUBSTITUTE HOUSE BILL NO. 2585, by House Committee on Ways & Means (originally sponsored by Representatives Springer, Haler, Eddy, Seaquist and Zeiger)

Creating efficiencies for institutions of higher education.

The measure was read the second time.

## MOTION

Senator Tom moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.88.160 and 2006 c 1 s 6 are each amended to read as follows:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

(2) Except as provided in chapter 43.88C RCW, the director of financial management is responsible for quarterly reporting of primary operating budget drivers such as applicable workloads, caseload estimates, and appropriate unit cost data. These reports shall be transmitted to the legislative fiscal committees or by electronic means to the legislative evaluation and accountability program committee. Quarterly reports shall include actual monthly data and the variance between actual and estimated data to date.

The reports shall also include estimates of these items for the remainder of the budget period.

(3) The director of financial management shall report at least annually to the appropriate legislative committees regarding the status of all appropriated capital projects, including transportation projects, showing significant cost overruns or underruns. If funds are shifted from one project to another, the office of financial management shall also reflect this in the annual variance report. Once a project is complete, the report shall provide a final summary showing estimated start and completion dates of each project phase compared to actual dates, estimated costs of each project phase compared to actual costs, and whether or not there are any outstanding liabilities or unsettled claims at the time of completion.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Develop and maintain a system of internal controls and internal audits comprising methods and procedures to be adopted by each agency that will safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies for accounting and financial controls. The system developed by the director shall include criteria for determining the scope and comprehensiveness of internal controls required by classes of agencies, depending on the level of resources at risk.

Each agency head or authorized designee shall be assigned the responsibility and authority for establishing and maintaining internal audits following the standards of internal auditing of the institute of internal auditors;

(b) Make surveys and analyses of agencies with the object of determining better methods and increased effectiveness in the use of manpower and materials; and the director shall authorize expenditures for employee training to the end that the state may benefit from training facilities made available to state employees;

(c) Establish policies for allowing the contracting of child care services;

(d) Report to the governor with regard to duplication of effort or lack of coordination among agencies;

(e) Review any pay and classification plans, and changes thereunder, developed by any agency for their fiscal impact: PROVIDED, That none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by statute relating to the fixing of qualifications requirements for recruitment, appointment, or promotion of employees of any agency. The director shall advise and confer with agencies including appropriate standing committees of the legislature as may be designated by the speaker of the house and the president of the senate regarding the fiscal impact of such plans and may amend or alter the plans, except that for the following agencies no amendment or alteration of the plans may be made without the approval of the agency concerned: Agencies headed by elective officials;

(f) Fix the number and classes of positions or authorized employee years of employment for each agency and during the fiscal period amend the determinations previously fixed by the director except that the director shall not be empowered to fix the number or the classes for the following: Agencies headed by elective officials;

(g) Adopt rules to effectuate provisions contained in (a) through (f) of this subsection.

(5) The treasurer shall:

(a) Receive, keep, and disburse all public funds of the state not expressly required by law to be received, kept, and disbursed by some other persons: PROVIDED, That this subsection shall not apply to those public funds of the institutions of higher learning which are not subject to appropriation;

(b) Receive, disburse, or transfer public funds under the treasurer's supervision or custody;

(c) Keep a correct and current account of all moneys received and disbursed by the treasurer, classified by fund or account;

(d) Coordinate agencies' acceptance and use of credit cards and other payment methods, if the agencies have received authorization under RCW 43.41.180;

(e) Perform such other duties as may be required by law or by regulations issued pursuant to this law.

It shall be unlawful for the treasurer to disburse public funds in the treasury except upon forms or by alternative means duly prescribed by the director of financial management. These forms or alternative means shall provide for authentication and certification by the agency head or the agency head's designee that the services have been rendered or the materials have been furnished; or, in the case of loans or grants, that the loans or grants are authorized by law; or, in the case of payments for periodic maintenance services to be performed on state owned equipment, that a written contract for such periodic maintenance services is currently in effect; and the treasurer shall not be liable under the treasurer's surety bond for erroneous or improper payments so made. When services are lawfully paid for in advance of full performance by any private individual or business entity other than equipment maintenance providers or as provided for by RCW 42.24.035, such individual or entity other than central stores rendering such services shall make a cash deposit or furnish surety bond coverage to the state as shall be fixed in an amount by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of ~~((general administration))~~ enterprise services but in no case shall such required cash deposit or surety bond be less than an amount which will fully indemnify the state against any and all losses on account of breach of promise to fully perform such services. No payments shall be made in advance for any equipment maintenance services to be performed more than twelve months after such payment except that institutions of higher education as defined in RCW 28B.10.016 may make payments in advance for equipment maintenance services to be performed up to sixty months after such payment. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. The responsibility for recovery of erroneous or improper payments made under this section shall lie with the agency head or the agency head's designee in accordance with ~~((regulations))~~ rules issued pursuant to this chapter. Nothing in this section shall be construed to permit a public body to advance funds to a private service provider pursuant to a grant or loan before services have been rendered or material furnished.

(6) The state auditor shall:

(a) Report to the legislature the results of current post audits that have been made of the financial transactions of each agency; to this end the auditor may, in the auditor's discretion, examine the books and accounts of any agency, official, or employee charged with the receipt, custody, or safekeeping of public funds. Where feasible in conducting examinations, the auditor shall utilize data and findings from the internal control system prescribed by the office of financial management. The current post audit of each agency may include a section on recommendations to the legislature as provided in (c) of this subsection.

(b) Give information to the legislature, whenever required, upon any subject relating to the financial affairs of the state.

(c) Make the auditor's official report on or before the thirty-first of December which precedes the meeting of the legislature. The report shall be for the last complete fiscal period and shall include determinations as to whether agencies, in making expenditures, complied with the laws of this state. The state auditor is authorized to perform or participate in performance verifications and

performance audits as expressly authorized by the legislature in the omnibus biennial appropriations acts or in the performance audit work plan approved by the joint legislative audit and review committee. The state auditor, upon completing an audit for legal and financial compliance under chapter 43.09 RCW or a performance verification, may report to the joint legislative audit and review committee or other appropriate committees of the legislature, in a manner prescribed by the joint legislative audit and review committee, on facts relating to the management or performance of governmental programs where such facts are discovered incidental to the legal and financial audit or performance verification. The auditor may make such a report to a legislative committee only if the auditor has determined that the agency has been given an opportunity and has failed to resolve the management or performance issues raised by the auditor. If the auditor makes a report to a legislative committee, the agency may submit to the committee a response to the report. This subsection (6) shall not be construed to authorize the auditor to allocate other than de minimis resources to performance audits except as expressly authorized in the appropriations acts or in the performance audit work plan. The results of a performance audit conducted by the state auditor that has been requested by the joint legislative audit and review committee must only be transmitted to the joint legislative audit and review committee.

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management. It shall be the duty of the director of financial management to cause corrective action to be taken within six months, such action to include, as appropriate, the withholding of funds as provided in RCW 43.88.110. The director of financial management shall annually report by December 31st the status of audit resolution to the appropriate committees of the legislature, the state auditor, and the attorney general. The director of financial management shall include in the audit resolution report actions taken as a result of an audit including, but not limited to, types of personnel actions, costs and types of litigation, and value of recouped goods or services.

(e) Promptly report any irregularities to the attorney general.

(f) Investigate improper governmental activity under chapter 42.40 RCW.

~~((e))~~ In addition to the authority given to the state auditor in this subsection (6), the state auditor is authorized to conduct performance audits identified in RCW 43.09.470. Nothing in this subsection (6) shall limit, impede, or restrict the state auditor from conducting performance audits identified in RCW 43.09.470.

(7) The joint legislative audit and review committee may:

(a) Make post audits of the financial transactions of any agency and management surveys and program reviews as provided for in chapter 44.28 RCW as well as performance audits and program evaluations. To this end the joint committee may in its discretion examine the books, accounts, and other records of any agency, official, or employee.

(b) Give information to the legislature or any legislative committee whenever required upon any subject relating to the performance and management of state agencies.

(c) Make a report to the legislature which shall include at least the following:

(i) Determinations as to the extent to which agencies in making expenditures have complied with the will of the legislature and in this connection, may take exception to specific expenditures or financial practices of any agencies; and

(ii) Such plans as it deems expedient for the support of the state's credit, for lessening expenditures, for promoting frugality and

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economy in agency affairs, and generally for an improved level of fiscal management.

**Sec. 2.** RCW 41.06.157 and 2011 1st sp.s. c 43 s 411 are each amended to read as follows:

(1) To promote the most effective use of the state's workforce and improve the effectiveness and efficiency of the delivery of services to the citizens of the state, the director shall adopt and maintain a comprehensive classification plan for all positions in the classified service. The classification plan must:

- (a) Be simple and streamlined;
- (b) Support state agencies in responding to changing technologies, economic and social conditions, and the needs of its citizens;
- (c) Value workplace diversity;
- (d) Facilitate the reorganization and decentralization of governmental services;
- (e) Enhance mobility and career advancement opportunities; and
- (f) Consider rates in other public employment and private employment in the state.

(2) An appointing authority and an employee organization representing classified employees of the appointing authority for collective bargaining purposes may jointly request the human resources director to initiate a classification study.

(3) For institutions of higher education and related boards, the director may adopt special salary ranges to be competitive with positions of a similar nature in the state or the locality in which the institution of higher education or related board is located.

(4) For health care classifications, institutions of higher education may implement higher education health care special pay plans to be competitive with positions of a similar nature in the locality in which the institution of higher education is located. In administering a special pay plan, institutions may authorize compensation changes including but not limited to increases in salary ranges, new top steps in salary ranges, premium pay, and adjustments for community practice. Such special pay plans are not subject to director approval or adoption; however, institutions of higher education shall report annually to the director actions they have taken under the provisions of this section.

(5) The director may undertake salary surveys of positions in other public and private employment to establish market rates. Any salary survey information collected from private employers which identifies a specific employer with salary rates which the employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW.

**Sec. 3.** RCW 41.04.240 and 1977 ex.s. c 269 s 1 are each amended to read as follows:

(1) Except with regard to institutions of higher education as defined in RCW 28B.10.016, any official of the state or of any political subdivision, municipal corporation, or quasi-municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of at least twenty-five employees to pay all or part of such salaries or wages to any financial institution for either: ~~((4))~~ (a) Credit to the employees' accounts in such financial institution; or ~~((2))~~ (b) immediate transfer therefrom to the employees' accounts in any other financial institutions(~~:- PROVIDED, That~~).

(2) In disbursing funds for payment of salaries and wages of employees, institutions of higher education as defined in RCW 28B.10.016 are authorized to require the following payment methods:

(a) For employees who have an account in a financial institution, payment to any financial institution for either: (i) Credit to the employees' accounts in such financial institution; or (ii) immediate transfer therefrom to the employees' accounts in any

other financial institutions; and

(b) For employees who do not have an account in a financial institution, payment by alternate methods such as payroll cards.

(3) Nothing in this section shall be construed as authorizing any employer to require the employees to have an account in any particular financial institution or type of financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the employees involved, and written directions provided to such financial institution of the amount to be credited to the account of an employee or to be transferred to an account in another financial institution for such employee. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth herein and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the employee.

For the purposes of this section "financial institution" means any bank or trust company established in this state pursuant to chapter 2, Title 12, United States Code, or Title 30 RCW, and any credit union established in this state pursuant to chapter 14, Title 12, United States Code, or chapter 31.12 RCW, and any mutual savings bank established in this state pursuant to Title 32 RCW, and any savings and loan association established in this state pursuant to chapter 12, Title 12, United States Code, or Title 33 RCW.

**Sec. 4.** RCW 28B.10.029 and 2011 1st sp.s. c 43 s 303 and 2011 c 198 s 1 are each reenacted and amended to read as follows:

(1)(a) An institution of higher education may exercise independently those powers otherwise granted to the director of enterprise services in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education.

(b) Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of enterprise services.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection, purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.685, 43.19.700 through 43.19.704, and 43.19.560 through 43.19.637.

(ii) Institutions of higher education may use all appropriate means for making and paying for travel arrangements including, but not limited to, electronic booking and reservations, advance payment and deposits for tours, lodging, and other necessary expenses, and other travel transactions based on standard industry practices and federal accountable plan requirements. Such arrangements shall support student, faculty, staff, and other participants' travel, by groups and individuals, both domestic and international, in the most cost-effective and efficient manner possible, regardless of the source of funds.

(iii) Formal sealed, electronic, or web-based competitive bidding is not necessary for purchases or personal services contracts by institutions of higher education for less than one hundred thousand dollars. However, for purchases and personal services contracts of ten thousand dollars or more and less than one hundred thousand dollars, quotations must be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone, electronic, or written quotations, or any combination thereof. As part of securing the three vendor quotations, institutions of higher education must invite at least one quotation each from a certified minority and a certified woman-owned vendor that otherwise qualifies to perform the work. A record of competition for all such purchases and personal services contracts of ten thousand dollars or more and less than one hundred thousand dollars must be documented for audit purposes.

(d) Purchases under chapter 39.29, 43.19, or 43.105 RCW by institutions of higher education may be made by using contracts for materials, supplies, services, or equipment negotiated or entered into by, for, or through group purchasing organizations.

(e) The community and technical colleges shall comply with RCW 43.19.450.

(f) Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.769, 43.19.763, and 43.19.781.

(g) If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685 and 43.19.637.

(h) Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of enterprise services. Thereafter the director of enterprise services shall not be required to provide those services for that institution for the duration of the enterprise services contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4)(a) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(b) Institutions of higher education shall endeavor to assure the department of corrections has notifications of bid opportunities with the goal of meeting or exceeding the purchasing target in (a) of this subsection.

**NEW SECTION. Sec. 5.** By January 1, 2017, institutions of higher education as defined in RCW 28B.10.016 must report to the legislature and the governor on: (1) The amount of savings resulting from use of the higher education provisions of sections 1 through 3 of this act; and (2) the manner in which such savings were used to promote student academic success.

**Sec. 6.** RCW 28B.15.031 and 2011 1st sp.s. c 10 s 2 and 2011 c 274 s 2 are each reenacted and amended to read as follows:

(1) 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 five percent of operating fees shall be retained by the four-year institutions of higher education that increase tuition for resident undergraduate students above assumed tuition increases in the omnibus appropriations act, a minimum of four percent of operating fees shall be retained by four-year institutions of higher education that do not increase tuition for resident undergraduates above assumed increases in the omnibus appropriations act, and a minimum of three and one-half percent of operating fees shall be retained by the community and technical colleges for the purposes of RCW 28B.15.820. At least thirty percent of operating fees required to be retained by the four-year institutions for purposes of RCW 28B.15.820 shall be used only for the purposes of RCW 28B.15.820(10).

(2) In addition to the three and one-half percent of operating fees retained by the institutions under subsection (1) of this section, up to three percent of operating fees charged to students at community and technical colleges shall be transferred to the community and technical college innovation account for the implementation of the college board's strategic technology plan in RCW 28B.50.515. The percentage to be transferred to the community and technical college innovation account shall be determined by the college board each year but shall not exceed three percent of the operating fees collected each year.

(3) Local operating fee accounts shall not be subject to appropriation by the legislature (~~(€)~~) but shall be subject to allotment procedures by budget program and fiscal year under chapter 43.88 RCW.

**Sec. 7.** RCW 43.88.150 and 2011 1st sp.s. c 50 s 948 are each amended to read as follows:

(1) For those agencies that make expenditures from both appropriated and nonappropriated funds for the same purpose, the governor shall direct such agencies to charge their expenditures in such ratio, as between appropriated and nonappropriated funds, as will conserve appropriated funds. ~~((This subsection does not apply to))~~ For institutions of higher education, as defined in RCW 28B.10.016, ~~((except during the 2011-2013 fiscal biennium))~~ this subsection applies only to operating fee accounts.

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

(3) The office of financial management shall adopt guidelines for the implementation of this section. The guidelines may account

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for federal matching requirements or other requirements to spend other moneys in a particular manner."

majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

SECOND READING

Senator Tom moved that the following amendment by Senators Tom and Hill to the committee striking amendment be adopted:

HOUSE BILL NO. 2499, by Representatives Billig, Finn, Hunt, Appleton, Hasegawa, Reykdal, Liias, Ormsby, Sells, Jinkins, Fitzgibbon, Kagi, Miloscia, Kelley, Hudgins, Roberts and Pollet

On page 12, line 20 of the amendment, after "provisions of" strike "sections 1 through 3 of"

Expanding disclosure of political advertising to include advertising supporting or opposing ballot measures.

Senators Tom and Hill spoke in favor of adoption of the amendment to the committee striking amendment.

The measure was read the second time.

The President declared the question before the Senate to be the adoption of the amendment by Senators Tom and Hill on page 12, line 20 to the committee striking amendment to Third Substitute House Bill No. 2585.

MOTION

The motion by Senator Tom carried and the amendment to the committee striking amendment was adopted by voice vote.

Senator Swecker moved that the following amendment by Senators Swecker and Pridemore be adopted:

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Third Substitute House Bill No. 2585.

On page 2, line 38, after "period" strike all material through "advertisement" and insert "~~((before the date of the advertisement))~~ preceding the date on which the advertisement is initially published or otherwise presented to the public"

The motion by Senator Tom carried and the committee striking amendment as amended was adopted by voice vote.

On page 3, beginning on line 13, after "period" strike all material through "advertisement" on line 14 and insert "~~((before the date of the advertisement))~~ preceding the date on which the advertisement is initially published or otherwise presented to the public"

MOTION

Senators Swecker and Pridemore spoke in favor of adoption of the amendment.

There being no objection, the following title amendment was adopted:

Senator Fraser spoke on adoption of the amendment.

On page 1, line 2 of the title, after "education;" strike the remainder of the title and insert "amending RCW 43.88.160, 41.06.157, 41.04.240, and 43.88.150; reenacting and amending RCW 28B.10.029 and 28B.15.031; and creating a new section."

The President declared the question before the Senate to be the adoption of the amendment by Senators Swecker and Pridemore on page 2, line 38 to House Bill No. 2499.

MOTION

The motion by Senator Swecker carried and the amendment was adopted by voice vote.

On motion of Senator Tom, the rules were suspended, Third Substitute House Bill No. 2585 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

MOTION

Senator Tom spoke in favor of passage of the bill.

On motion of Senator Pridemore, the rules were suspended, House Bill No. 2499 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

The President declared the question before the Senate to be the final passage of Third Substitute House Bill No. 2585 as amended by the Senate.

Senator Pridemore spoke in favor of passage of the bill.

ROLL CALL

The President declared the question before the Senate to be the final passage of House Bill No. 2499 as amended by the Senate.

The Secretary called the roll on the final passage of Third Substitute House Bill No. 2585 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2499 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 34; Nays, 14; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting yea: Senators Baumgartner, Benton, Brown, Chase, Conway, Eide, Fain, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Excused: Senator Roach

Voting nay: Senators Becker, Carrell, Delvin, Ericksen, Fraser, Holmquist Newbry, Honeyford, King, McAuliffe, Morton, Padden, Parlette, Pflug and Stevens

THIRD SUBSTITUTE HOUSE BILL NO. 2585 as amended by the Senate, having received the constitutional

Excused: Senator Roach

HOUSE BILL NO. 2499 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Harper, Senator Kline was excused.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2259, by House Committee on Higher Education (originally sponsored by Representatives Zeiger, Seaquist, Haler and Roberts)

Eliminating certain duplicative higher education reporting requirements.

The measure was read the second time.

#### MOTION

On motion of Senator Eide, the rules were suspended, Substitute House Bill No. 2259 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Eide spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2259.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2259 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 1; Excused, 2.

Voting yea: Senators Baumgartner, Becker, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Benton

Excused: Senators Kline and Roach

SUBSTITUTE HOUSE BILL NO. 2259, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2567, by House Committee on Local Government (originally sponsored by Representative Fitzgibbon)

Authorizing an optional system of rates and charges for conservation districts.

The measure was read the second time.

#### MOTION

Senator Hatfield moved that the following committee striking amendment by the Committee on Agriculture & Rural Economic Development be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 89.08 RCW to read as follows:

(1) Any county legislative authority may approve by resolution revenues to a conservation district by fixing rates and charges. The county legislative authority may provide for this system of rates and charges as an alternative to, but not in addition to, a special assessment provided by RCW 89.08.400. In fixing rates and charges, the county legislative authority may in its discretion consider the information proposed to the county legislative authority by a conservation district consistent with this section.

(2) A conservation district, in proposing a system of rates and charges, may consider:

(a) Services furnished, to be furnished, or available to the landowner;

(b) Benefits received, to be received, or available to the property;

(c) The character and use of land;

(d) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user;

(e) The income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or

(f) Any other matters that present a reasonable difference as a ground for distinction.

(3)(a) The maximum annual per acre rate or charge shall not exceed ten cents per acre. The maximum annual per parcel rate shall not exceed five dollars, except that for counties with a population of over one million five hundred thousand persons, the maximum annual per parcel rate shall not exceed ten dollars.

(b) Public land, including lands owned or held by the state, shall be subject to rates and charges to the same extent as privately owned lands. The procedures provided in chapter 79.44 RCW shall be followed if lands owned or held by the state are subject to the rates and charges of a conservation district.

(c) Forest lands used solely for the planting, growing, or harvesting of trees may be subject to rates and charges if such lands are served by the activities of the conservation district, but the per acre rate or charge on such forest lands shall not exceed one-tenth of the weighted average per acre rate or charge on all other lands within the conservation district that are subject to rates and charges. The calculation of the weighted average per acre shall be a ratio calculated as follows: (i) The numerator shall be the total amount of money estimated to be derived from the per acre special rates and charges on the nonforest lands in the conservation district; and (ii) the denominator shall be the total number of nonforest land acres in the conservation district that are served by the activities of the conservation district and that are subject to the rates or charges of the conservation district. No more than ten thousand acres of such forest lands that is both owned by the same person or entity and is located in the same conservation district may be subject to the rates and charges that are imposed for that conservation district in any year. Per parcel charges shall not be imposed on forest land parcels. However, in lieu of a per parcel charge, a charge of up to three dollars per forest landowner may be imposed on each owner of forest lands whose forest lands are subject to a per acre rate or charge.

(4) The consideration, development, adoption, and implementation of a system of rates and charges shall follow the same public notice and hearing process and be subject to the same procedure and authority of RCW 89.08.400(2).

(5)(a) Following the adoption of a system of rates and charges, the conservation district board of supervisors shall establish by

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resolution a process providing for landowner appeals of the individual rates and charges as applicable to a parcel or parcels.

(b) Any appeal must be filed by the landowner with the conservation district no later than twenty-one days after the date property taxes are due. The decision of the board of supervisors regarding any appeal shall be final and conclusive.

(c) Any appeal of the decision of the board shall be to the superior court of the county in which the district is located, and served and filed within twenty-one days of the date of the board's written decision.

(6) A conservation district shall prepare a roll that implements the system of rates and charges approved by the county legislative authority. The rates and charges from the roll shall be spread by the county assessor as a separate item on the tax rolls and shall be collected and accounted for with property taxes by the county treasurer. The amount of the rates and charges shall constitute a lien against the land that shall be subject to the same conditions as a tax lien, and collected by the treasurer in the same manner as delinquent real property taxes, and subject to the same interest and penalty as for delinquent property taxes. The county treasurer shall deduct an amount from the collected rates and charges, as established by the county legislative authority, to cover the costs incurred by the county assessor and county treasurer in spreading and collecting the rates and charges, but not to exceed the actual costs of such work. All remaining funds collected under this section shall be transferred to the conservation district and used by the conservation district in accordance with this section.

(7) The rates and charges for a conservation district shall not be spread on the tax rolls and shall not be allocated with property tax collections in the following year if, after the system of rates and charges has been approved by the county legislative authority but before the fifteenth day of December in that year, a petition has been filed with the county legislative authority objecting to the imposition of such rates and charges, which petition has been signed by at least twenty percent of the owners of land that would be subject to the rate or charge to be imposed for a conservation district.

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

**NEW SECTION. Sec. 3.** 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."

#### MOTION

Senator Hatfield moved that the following amendment by Senator Hatfield and others to the committee striking amendment and others be adopted:

On page 1, line 26 of the amendment, after "(3)(a)" strike "The" and insert "The system of rates and charges may include an annual per acre amount, an annual per parcel amount, or an annual per parcel amount plus an annual per acre amount. If included in the system of rates and charges, the"

On page 2, line 8 of the amendment, after "district" strike ", but" and insert ". However, if the system of rates and charges includes an annual per acre amount or an annual per parcel amount plus an annual per acre amount,"

Senator Hatfield spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Hatfield and others on

page 1, line 26 to the committee striking amendment to Engrossed Substitute House Bill No. 2567.

The motion by Senator Hatfield carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Agriculture & Rural Economic Development as amended to Engrossed Substitute House Bill No. 2567.

The motion by Senator Hatfield carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "districts;" strike the remainder of the title and insert "adding a new section to chapter 89.08 RCW; and declaring an emergency."

#### MOTION

On motion of Senator Hatfield, the rules were suspended, Engrossed Substitute House Bill No. 2567 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hatfield and Nelson spoke in favor of passage of the bill.

Senator Sheldon spoke on final passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2567 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2567 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Morton and Padden

Excused: Senators Kline and Roach

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2567 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2574, by House Committee on Transportation (originally sponsored by Representatives Kristiansen and Pearson)

Allowing special year tabs on special license plates for persons with disabilities subject to annual vehicle registration. Revised for 1st Substitute: Allowing special year tabs on certain special license plates for persons with disabilities.

The measure was read the second time.

## MOTION

On motion of Senator King, the rules were suspended, Substitute House Bill No. 2574 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2574.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2574 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Kline

SUBSTITUTE HOUSE BILL NO. 2574, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

SUBSTITUTE HOUSE BILL NO. 2657, by House Committee on Health & Human Services Appropriations & Oversight (originally sponsored by Representatives Roberts, Kagi, Maxwell and Kenney)

Revising provisions affecting adoption support expenditures.

The measure was read the second time.

## MOTION

On motion of Senator Regala, the rules were suspended, Substitute House Bill No. 2657 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Regala and Stevens spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2657.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2657 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker,

Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

SUBSTITUTE HOUSE BILL NO. 2657, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

HOUSE BILL NO. 2482, by Representatives Kenney, Finn, Ryu, Hasegawa and Stanford

Designating innovation partnership zones.

The measure was read the second time.

## MOTION

Senator Kastama moved that the following committee striking amendment by the Committee on Economic Development, Trade & Innovation be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.330.270 and 2009 c 72 s 1 are each amended to read as follows:

(1) The department (~~shall~~) must design and implement an innovation partnership zone program through which the state will encourage and support research institutions, workforce training organizations, and globally competitive companies to work cooperatively in close geographic proximity to create commercially viable products and jobs.

(2) The director (~~shall~~) must designate innovation partnership zones on the basis of the following criteria:

(a) Innovation partnership zones must have three types of institutions operating within their boundaries, or show evidence of planning and local partnerships that will lead to dense concentrations of these institutions:

(i) Research capacity in the form of a university or community college fostering commercially valuable research, nonprofit institutions creating commercially applicable innovations, or a national laboratory;

(ii) An industry cluster as defined in RCW 43.330.090. The cluster must include a dense proximity of globally competitive firms in a research-based industry or industries or (~~or~~) individual firms with innovation strategies linked to (a)(i) of this subsection. A globally competitive firm may be signified through international organization for standardization 9000 or 1400 certification, or (~~other recognized~~) evidence of sales in international (~~success~~) markets; and

(iii) Training capacity either within the zone or readily accessible to the zone. The training capacity requirement may be met by the same institution as the research capacity requirement, to the extent both are associated with an educational institution in the proposed zone.

(b) The support of a local jurisdiction, a research institution, an educational institution, an industry or cluster association, a workforce development council, and an associate development organization, port, or chamber of commerce;

(c) Identifiable boundaries for the zone within which the applicant will concentrate efforts to connect innovative researchers, entrepreneurs, investors, industry associations or clusters, and training providers. The geographic area defined should lend itself to a distinct identity and have the capacity to accommodate firm growth;

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(d) The innovation partnership zone administrator must be an economic development council, port, workforce development council, city, or county.

(3) With respect solely to the research capacity required in subsection (2)(a)(i) of this section, the director may waive the requirement that the research institution be located within the zone. To be considered for such a waiver, an applicant must provide a specific plan that demonstrates the research institution's unique qualifications and suitability for the zone, and the types of jointly executed activities that will be used to ensure ongoing, face-to-face interaction and research collaboration among the zone's partners.

(4) On October 1st of each odd-numbered year, the director ~~((shall))~~ must designate innovation partnership zones on the basis of applications that meet the legislative criteria, estimated economic impact of the zone, evidence of forward planning for the zone, and other criteria as ~~((recommended by))~~ developed by the department in consultation with the Washington state economic development commission. Estimated economic impact must include evidence of anticipated private investment, job creation, innovation, and commercialization. The director ~~((shall))~~ must require evidence that zone applicants will promote commercialization, innovation, and collaboration among zone residents.

(5) Innovation partnership zones are eligible for funds and other resources as provided by the legislature or at the discretion of the governor.

(6) If the innovation partnership zone meets the other requirements of the fund sources, then the zone is eligible for the following funds relating to:

(a) The local infrastructure financing tools program;

(b) The sales and use tax for public facilities in rural counties; ~~((and))~~

(c) Job skills;

(d) Local improvement districts; and

(e) Community economic revitalization board projects under chapter 43.160 RCW.

(7) An innovation partnership zone ~~((shall))~~ must be designated as a zone for a four-year period. At the end of the four-year period, the zone must reapply for the designation through the department.

(8) If the director finds that an applicant does not meet all of the statutory criteria or additional criteria recommended by the department in consultation with the Washington state economic development commission to be designated as an innovation partnership zone, the department must:

(a) Identify the deficiencies in the proposal and recommended steps for the applicant to take to strengthen the proposal;

(b) Provide the applicant with the opportunity to appeal the decision to the director; and

(c) Allow the applicant to reapply for innovation partnership designation on October 1st of the following calendar year or during any subsequent application cycle.

(9) If the director finds at any time after the initial year of designation that an innovation partnership zone is failing to meet the performance standards required in its contract with the department, the director may withdraw such designation and cease state funding of the zone.

~~((9))~~ (10) The department ~~((shall))~~ must convene annual information sharing events for innovation partnership zone administrators and other interested parties.

~~((10))~~ (11) An innovation partnership zone ~~((shall))~~ must annually provide performance measures as required by the director, including but not limited to private investment measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation.

~~((11))~~ (12) The department ~~((shall))~~ must compile a biennial report on the innovation partnership zone program by December 1st of every even-numbered year. The report ~~((shall))~~ must provide information for each zone on its: Objectives; funding, tax incentives, and other support obtained from public sector sources; major activities; partnerships; performance measures; and outcomes achieved since the inception of the zone or since the previous biennial report. The Washington state economic development commission ~~((shall))~~ must review the department's draft report and make recommendations on ways to increase the effectiveness of individual zones and the program overall. The department ~~((shall))~~ must submit the report, including the commission's recommendations, to the governor and legislature beginning December 1, 2010.

**Sec. 2.** RCW 43.160.010 and 2008 c 327 s 1 are each amended to read as follows:

(1) The legislature finds that it is the public policy of the state of Washington to direct financial resources toward the fostering of economic development through the stimulation of investment and job opportunities and the retention of sustainable existing employment for the general welfare of the inhabitants of the state. Reducing unemployment and reducing the time citizens remain jobless is important for the economic welfare of the state. A valuable means of fostering economic development is the construction of public facilities which contribute to the stability and growth of the state's economic base. Expenditures made for these purposes as authorized in this chapter are declared to be in the public interest, and constitute a proper use of public funds. A community economic revitalization board is needed which shall aid the development of economic opportunities. The general objectives of the board should include:

(a) Strengthening the economies of areas of the state which have experienced or are expected to experience chronically high unemployment rates or below average growth in their economies;

(b) Encouraging the diversification of the economies of the state and regions within the state in order to provide greater seasonal and cyclical stability of income and employment;

(c) Encouraging wider access to financial resources for both large and small industrial development projects;

(d) Encouraging new economic development or expansions to maximize employment;

(e) Encouraging the retention of viable existing firms and employment; ~~((and))~~

(f) Providing incentives for expansion of employment opportunities for groups of state residents that have been less successful relative to other groups in efforts to gain permanent employment; and

(g) Enhancing job and business growth through facility development and other improvements in innovation partnership zones designated under RCW 43.330.270.

(2) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to improve state highways, county roads, or city streets for industries considering locating or expanding in this state.

(3) The legislature finds it desirable to provide a process whereby the need for diverse public works improvements necessitated by planned economic development can be addressed in a timely fashion and with coordination among all responsible governmental entities.

(4) The legislature also finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to assist development of telecommunications infrastructure that supports business development, retention, and expansion in the state.

(5) The legislature also finds that the state's economic development efforts can be enhanced by providing funds to improve markets for those recyclable materials representing a large fraction of the waste stream. The legislature finds that public facilities which result in private construction of processing or remanufacturing facilities for recyclable materials are eligible for consideration from the board.

(6) The legislature finds that sharing economic growth statewide is important to the welfare of the state. The ability of communities to pursue business and job retention, expansion, and development opportunities depends on their capacity to ready necessary economic development project plans, sites, permits, and infrastructure for private investments. Project-specific planning, predevelopment, and infrastructure are critical ingredients for economic development. It is, therefore, the intent of the legislature to increase the amount of funding available through the community economic revitalization board and to authorize flexibility for available resources in these areas to help fund planning, predevelopment, and construction costs of infrastructure and facilities and sites that foster economic vitality and diversification.

**Sec. 3.** RCW 43.160.020 and 2009 c 565 s 35 are each amended to read as follows:

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

(1) "Board" means the community economic revitalization board.

(2) "Department" means the department of commerce.

(3) "Local government" or "political subdivision" means any port district, county, city, town, special purpose district, and any other municipal corporations or quasi-municipal corporations in the state providing for public facilities under this chapter.

(4) "Public facilities" means a project of a local government or a federally recognized Indian tribe for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of: Bridges(=); roads(=); research, testing, training, and incubation facilities in areas designated as innovation partnership zones under RCW 43.330.270; buildings or structures; domestic and industrial water, earth stabilization, sanitary sewer, storm sewer, railroad, electricity, telecommunications, transportation, natural gas, ~~(buildings or structures,)~~ and port facilities(=); all for the purpose of job creation, job retention, or job expansion.

(5) "Rural county" means a county with a population density of fewer than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles, as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

**Sec. 4.** RCW 82.14.370 and 2009 c 511 s 1 are each amended to read as follows:

(1) The legislative authority of a rural county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and ~~((shall))~~ must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax ~~((shall))~~ may not exceed 0.09 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, except that for rural counties with population densities between sixty and one hundred persons per square mile, the rate shall not exceed 0.04 percent before January 1, 2000.

(2) The tax imposed under subsection (1) of this section ~~((shall))~~ must be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue ~~((shall))~~ must perform the collection of such taxes on behalf of the county at no cost to the county.

(3)(a) Moneys collected under this section ~~((shall))~~ may only be used to finance public facilities serving economic development purposes in rural counties and finance personnel in economic development offices. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act, the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county.

(b) In implementing this section, the county ~~((shall))~~ must consult with cities, towns, and port districts located within the county and the associate development organization serving the county to ensure that the expenditure meets the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection. Each county collecting money under this section ~~((shall))~~ must report, as follows, to the office of the state auditor, within one hundred fifty days after the close of each fiscal year: (i) A list of new projects begun during the fiscal year, showing that the county has used the funds for those projects consistent with the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection; and (ii) expenditures during the fiscal year on projects begun in a previous year. Any projects financed prior to June 10, 2004, from the proceeds of obligations to which the tax imposed under subsection (1) of this section has been pledged ~~((shall))~~ may not be deemed to be new projects under this subsection. No new projects funded with money collected under this section may be for justice system facilities.

(c) The definitions in this section apply throughout this section.

(i) "Public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroads, ~~((electricity))~~ electrical facilities, natural gas facilities, research, testing, training, and incubation facilities in innovation partnership zones designated under RCW 43.330.270, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.

(ii) "Economic development purposes" means those purposes which facilitate the creation or retention of businesses and jobs in a county.

(iii) "Economic development office" means an office of a county, port districts, or an associate development organization as defined in RCW 43.330.010, which promotes economic development purposes within the county.

(4) No tax may be collected under this section before July 1, 1998.

(a) Except as provided in (b) of this subsection, no tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(b) For counties imposing the tax at the rate of 0.09 percent before August 1, 2009, the tax expires on the date that is twenty-five years after the date that the 0.09 percent tax rate was first imposed by that county.

(5) For purposes of this section, "rural county" means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th."

Senators Kastama and Schoesler spoke in favor of adoption of the committee striking amendment.

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The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Economic Development, Trade & Innovation to House Bill No. 2482.

The motion by Senator Kastama carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, beginning on line 1 of the title, after "zones;" strike the remainder of the title and insert "and amending RCW 43.330.270, 43.160.010, 43.160.020, and 82.14.370."

#### MOTION

On motion of Senator Kastama, the rules were suspended, House Bill No. 2482 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kastama spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2482 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2482 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Padden

HOUSE BILL NO. 2482 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2535, by Representatives Ladenburg, Johnson, Moscoso, Walsh, Ross, Klippert, Goodman, Nealey, Fitzgibbon, Appleton, Pollet, Green, Billig, Roberts, Kirby, Probst, Jinkins, Kagi, Lytton, Dickerson, Darneille, Santos and Kenney

Creating a juvenile gang court.

The measure was read the second time.

#### MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be not adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that juvenile gang activity in Washington state poses a significant threat to communities and to the positive development of juveniles as they mature into adulthood. Thus, a strategic and collaborative approach is needed to address the problem of juvenile gangs. Many juveniles who become involved in gang activity have been exposed to risk factors such as antisocial behavior, alcohol and drug use, mental health problems, and victimization. Evidence-based and research-based gang intervention programs and strategies can provide services to these youth such as mental health counseling, education, chemical dependency treatment, and skill building. The legislature further finds that a court specifically developed to facilitate the delivery of these critical services to gang-involved juveniles and that provides a supportive team will assist juveniles in breaking out of a cycle of gang activity, reduce criminal activity, and increase their ability to develop into successful adults.

NEW SECTION. Sec. 2. A new section is added to chapter 13.40 RCW to read as follows:

(1) Counties may establish and operate juvenile gang courts.

(2) For the purposes of this section, "juvenile gang court" means a court that has special calendars or dockets designed to achieve a reduction in gang-related offenses among juvenile offenders by increasing their likelihood for successful rehabilitation through early, continuous, and judicially supervised and integrated evidence-based services proven to reduce juvenile recidivism and gang involvement or through the use of research-based or promising practices identified by the Washington state partnership council on juvenile justice.

(3) Any county that establishes a juvenile gang court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The juvenile gang court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(a) The juvenile offender participates in gang activity, is repeatedly in the company of known gang members, or openly admits that he or she has been admitted to a gang;

(b) The juvenile offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(c) The juvenile offender is not currently charged with an offense:

(i) That is a class A felony offense;

(ii) That is a sex offense;

(iii) During which the juvenile offender intentionally discharged, threatened to discharge, or attempted to discharge a firearm in furtherance of the offense;

(iv) That subjects the juvenile offender to adult court original jurisdiction pursuant to RCW 13.04.030(1)(e)(v); or

(v) That constitutes assault of a child in the second degree.

(4) For the purposes of this act, a "gang" means a group which consists of three or more persons; has identifiable leadership; and on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(5) The juvenile offender who is admitted to juvenile gang court must:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with the requirements of the juvenile gang court; and

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

(6) The adjudicatory hearing shall be limited to a reading of the court's record.

(7) Following the stipulation to the facts in the police report, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(8) Upon admission to juvenile gang court, an individualized plan shall be developed for the juvenile, identifying goals for the juvenile and a team to support the juvenile, which may include mental health and chemical dependency treatment providers, a probation officer, teachers, defense counsel, the prosecuting attorney, law enforcement, guardians or family members, and other participants deemed appropriate by the court. At least one member of the support team must have daily contact with the juvenile.

(9) Upon successful completion of the juvenile gang court requirements over a twelve-month period, the conviction entered by the court shall be vacated and the charge shall be dismissed with prejudice.

(10) A juvenile may only be admitted to juvenile gang court once. If the juvenile fails to complete the requirements of gang court after being admitted, or successfully completes the requirements of gang court after being admitted, the juvenile may not be admitted again.

(11) If the juvenile fails to complete the juvenile gang court requirements, the court shall enter an order of disposition pursuant to RCW 13.40.0357.

**NEW SECTION. Sec. 3.** A new section is added to chapter 13.40 RCW to read as follows:

(1) Counties that create a juvenile gang court pursuant to section 2 of this act shall track and document data regarding the criteria that led to a juvenile's admission to gang court, the successful and unsuccessful completion of juvenile gang court requirements, and any subsequent criminal charges of juvenile gang court participants and provide such data to the administrative office of the courts.

(2) Subject to the availability of funds appropriated for this purpose, the administrative office of the courts shall study the data provided by the counties pursuant to subsection (1) of this section and report to the appropriate legislative committees regarding the recidivism outcomes for juvenile gang court participants. A preliminary report shall be completed by December 1, 2013. A final report shall be completed by December 1, 2015."

On page 1, line 1 of the title, after "court;" strike the remainder of the title and insert "adding new sections to chapter 13.40 RCW; and creating a new section."

The President declared the question before the Senate to be the motion by Senator Hargrove to not adopt the committee striking amendment by the Committee on Human Services & Corrections to House Bill No. 2535.

The motion by Senator Hargrove carried and the committee striking amendment was not adopted by voice vote.

#### MOTION

Senator Padden moved that the following striking amendment by Senator Padden and others be adopted:

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** The legislature finds that juvenile gang activity in Washington state poses a significant threat to communities and to the positive development of juveniles as they mature into adulthood. Thus, a strategic and collaborative approach is needed to address the problem of juvenile gangs. Many juveniles who become involved in gang activity have been exposed to risk factors such as antisocial behavior, alcohol and drug use, mental health problems, and victimization. Evidence-based and research-based gang intervention programs and strategies can provide services to these youth such as mental health counseling, education, chemical dependency treatment, and skill building. The

legislature further finds that a court specifically developed to facilitate the delivery of these critical services to gang-involved juveniles and that provides a supportive team will assist juveniles in breaking out of a cycle of gang activity, reduce criminal activity, and increase their ability to develop into successful adults.

**NEW SECTION. Sec. 2.** A new section is added to chapter 13.40 RCW to read as follows:

(1) Counties may establish and operate juvenile gang courts.

(2) For the purposes of this section, "juvenile gang court" means a court that has special calendars or dockets designed to achieve a reduction in gang-related offenses among juvenile offenders by increasing their likelihood for successful rehabilitation through early, continuous, and judicially supervised and integrated evidence-based services proven to reduce juvenile recidivism and gang involvement or through the use of research-based or promising practices identified by the Washington state partnership council on juvenile justice.

(3) Any county that establishes a juvenile gang court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The juvenile gang court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(a) The juvenile offender participates in gang activity, is repeatedly in the company of known gang members, or openly admits that he or she has been admitted to a gang;

(b) The juvenile offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(c) The juvenile offender is not currently charged with an offense:

(i) That is a class A felony offense;

(ii) That is a sex offense;

(iii) During which the juvenile offender intentionally discharged, threatened to discharge, or attempted to discharge a firearm in furtherance of the offense;

(iv) That subjects the juvenile offender to adult court original jurisdiction pursuant to RCW 13.04.030(1)(e)(v); or

(v) That constitutes assault of a child in the second degree.

(4) The court, the prosecutor, and the juvenile must agree to the juvenile's admission to a gang court created under this section.

(5) For the purposes of this act, a "gang" means a group which consists of three or more persons; has identifiable leadership; and on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(6) The juvenile offender who is admitted to juvenile gang court must:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with the requirements of the juvenile gang court; and

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

(7) The adjudicatory hearing shall be limited to a reading of the court's record.

(8) Following the stipulation to the facts in the police report, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(9) Upon admission to juvenile gang court, an individualized plan shall be developed for the juvenile, identifying goals for the juvenile and a team to support the juvenile, which may include mental health and chemical dependency treatment providers, a probation officer, teachers, defense counsel, the prosecuting attorney, law enforcement, guardians or family members, and other participants deemed appropriate by the court. The individualized plan shall include a requirement that the juvenile remain in the gang

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court program for at least twelve months. At least one member of the support team must have daily contact with the juvenile.

(10) Upon successful completion of the juvenile gang court requirements, the conviction entered by the court shall be vacated and the charge shall be dismissed with prejudice.

(11) A juvenile may only be admitted to juvenile gang court once. If the juvenile fails to complete the requirements of gang court after being admitted, or successfully completes the requirements of gang court after being admitted, the juvenile may not be admitted again.

(12) If the juvenile fails to complete the juvenile gang court requirements, the court shall enter an order of disposition pursuant to RCW 13.40.0357.

**NEW SECTION. Sec. 3.** A new section is added to chapter 13.40 RCW to read as follows:

(1) Counties that create a juvenile gang court pursuant to section 2 of this act shall track and document data regarding the criteria that led to a juvenile's admission to gang court, the successful and unsuccessful completion of juvenile gang court requirements, and any subsequent criminal charges of juvenile gang court participants and provide such data to the administrative office of the courts.

(2) Subject to the availability of funds appropriated for this purpose, the administrative office of the courts shall study the data provided by the counties pursuant to subsection (1) of this section and report to the appropriate legislative committees regarding the recidivism outcomes for juvenile gang court participants. A preliminary report shall be completed by December 1, 2013. A final report shall be completed by December 1, 2015."

Senator Padden spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Padden and others to House Bill No. 2535.

The motion by Senator Padden carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "court;" strike the remainder of the title and insert "adding new sections to chapter 13.40 RCW; and creating a new section."

MOTION

On motion of Senator Hargrove, the rules were suspended, House Bill No. 2535 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove and King spoke in favor of passage of the bill.

MOTION

On motion of Senator Harper, Senator Prentice was excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2535 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2535 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator Prentice

HOUSE BILL NO. 2535 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2197, by House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne and Eddy)

Concerning the Uniform Commercial Code.

The measure was read the second time.

MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Judiciary be adopted:

Strike everything after the enacting clause and insert the following:

**"PART I  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 1**

**Sec. 101.** RCW 62A.1-101 and 1965 ex.s. c 157 s 1-101 are each amended to read as follows:

**SHORT TITLES.** (a) This title (~~shall be known and~~) may be cited as the Uniform Commercial Code.

(b) This Article may be cited as Uniform Commercial Code--General Provisions.

**Sec. 102.** RCW 62A.1-102 and 1965 ex.s. c 157 s 1-102 are each amended to read as follows:

((PURPOSES; RULES OF CONSTRUCTION; VARIATION BY AGREEMENT.)) **SCOPE OF ARTICLE.**((1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words

"unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.) This Article applies to a transaction to the extent that it is governed by another article of this title.

**Sec. 103.** RCW 62A.1-103 and 1965 ex.s. c 157 s 1-103 are each amended to read as follows:

~~((SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.))~~ CONSTRUCTION OF UNIFORM COMMERCIAL CODE TO PROMOTE ITS PURPOSES AND POLICIES; APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW. (a) This title must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, ~~((and))~~ and other validating or invalidating cause ~~((shall))~~ supplement its provisions.

**Sec. 104.** RCW 62A.1-104 and 1965 ex.s. c 157 s 1-104 are each amended to read as follows:

CONSTRUCTION AGAINST ~~((IMPLICIT))~~ IMPLIED REPEAL. This title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**Sec. 105.** RCW 62A.1-105 and 2001 c 32 s 8 are each amended to read as follows:

~~((TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE APPLICABLE LAW.))~~ SEVERABILITY. ((1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Governing law in the Article on Funds Transfers. RCW 62A.4A-507.

Letters of Credit. RCW 62A.5-116.

Applicability of the Article on Investment Securities. RCW 62A.8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. RCW 62A.9A-301 through 62A.9A-307.) If any provision or clause of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

**Sec. 106.** RCW 62A.1-106 and 1965 ex.s. c 157 s 1-106 are each amended to read as follows:

~~((REMEDIES TO BE LIBERALLY ADMINISTERED.))~~ USE OF SINGULAR AND PLURAL; GENDER. ((1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect.) In this title, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

**Sec. 107.** RCW 62A.1-107 and 1965 ex.s. c 157 s 1-107. Cf. former RCW sections: (i) RCW 62.01.119(3) are each amended to read as follows:

~~((WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.))~~ SECTION CAPTIONS. ((Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.)) Section captions are part of this title.

**Sec. 108.** RCW 62A.1-108 and 1965 ex.s. c 157 s 1-108 are each amended to read as follows:

~~((SEVERABILITY.))~~ RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. ((If any provision or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable.)) Except as provided in this section, this Article modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., except that nothing in this Article modifies, limits, or supersedes section 7001(c) of that act, and nothing in this section either authorizes or prohibits electronic delivery of any of the notices described in section 7003(b) of that act. This section does not modify, limit, or supersede application of the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., to transactions governed by Article 2 or 2A of this title.

**Sec. 109.** RCW 62A.1-201 and 2001 c 32 s 9 are each amended to read as follows:

GENERAL DEFINITIONS. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to ~~((additional))~~ definitions contained in ~~((the subsequent))~~ other articles of this title ~~((which are applicable to specific))~~ that apply to particular articles or parts thereof, ~~((and unless the context otherwise requires, in this Title))~~:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding(s) in which rights are determined.

(2) "Aggrieved party" means a party entitled to ~~((resort to))~~ pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or ~~((by implication))~~ inferred from other circumstances, including course of performance, course of dealing, or usage of trade ~~((or course of~~

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performance)) as provided in ~~((this Title (RCW 62A.1-205, RCW 62A.2-208, and RCW 62A.2A-207). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103))) RCW 62A.1-303. ((Compare "Contract".))~~

(4) "Bank" means ~~((any))~~ a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means ~~((the))~~ a person in control of a negotiable electronic document of title or a person in possession of ~~((an))~~ a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods, ~~(; and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill).~~ The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier(s) of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a ~~((pre-existing))~~ preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article ~~((62A.2 RCW))~~ 2 of this title may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt ~~((is not a buyer in ordinary course of business)).~~

(10) "Conspicuous," ~~((;))~~ with reference to a term ~~((or clause is conspicuous when it is)),~~ means so written, displayed, or presented that a reasonable person against ~~((whom))~~ which it is to operate ought to have noticed it. ~~((A printed heading in capitals (as: NON NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous".))~~ Whether a term ~~((or clause))~~ is "conspicuous" or not is ~~((for))~~ a decision ~~((by))~~ for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation ~~((which))~~ that results from the parties'

agreement as ~~((affected))~~ determined by this title ~~((and))~~ as supplemented by any other applicable ~~((rules of))~~ laws. ~~((Compare "Agreement".))~~

~~((12))~~ (13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

~~((13))~~ (14) "Defendant" includes a person in the position of defendant in a ~~((cross-action or))~~ counterclaim, cross-claim, or third-party claim.

~~((14))~~ (15) "Delivery," with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument ~~((s)),~~ a tangible document ~~((s))~~ of title, or chattel paper, ~~((or certificated securities))~~ means voluntary transfer of possession.

~~((15))~~ (16) "Document of title" (includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which) means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of ~~((it))~~ the record is entitled to receive, control, hold, and dispose of the ~~((document))~~ record and the goods ~~((it))~~ the record covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass) and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

~~((16))~~ (17) "Fault" means a default, breach, or wrongful act ~~((;))~~ or omission ~~((or breach)).~~

~~((17))~~ (18) "Fungible goods" ~~((with respect to goods or securities))~~ means:

(A) Goods ~~((or securities))~~ of which any unit ~~((is)),~~ by nature or usage of trade, is the equivalent of any other like unit ~~((;))~~; or

(B) Goods ~~((which are not fungible shall be deemed fungible for the purposes of this Title to the extent))~~ that ~~((under a particular))~~ by agreement ~~((or document unlike units))~~ are treated as equivalent ~~((s)).~~

~~((18))~~ (19) "Genuine" means free of forgery or counterfeiting.

~~((19))~~ (20) "Good faith," except as otherwise provided in Article 5 of this title, means honesty in fact ~~((in the conduct or transaction concerned))~~ and the observance of reasonable commercial standards of fair dealing.

~~((20))~~ (21) "Holder" with respect to a negotiable instrument, means:

(A) The person in possession ~~((if the))~~ of a negotiable instrument that is payable either to bearer or ~~((, in the case of an instrument payable to an identified person, if the))~~ to an identified person that is the person in possession ~~((—"Holder" with respect to))~~;

(B) The person in possession of a negotiable tangible document of title ~~((means the person in possession))~~ if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

((21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.)

(22) "Insolvency proceeding((s))" includes ~~((any))~~ an assignment for the benefit of creditors or other proceeding(s) intended to liquidate or rehabilitate the estate of the person involved.

(23) ~~((A person is))~~ "Insolvent" ~~((who either has))~~ means:

(A) Having generally ceased to pay ~~((his or her))~~ debts in the ordinary course of business ~~((or cannot))~~ other than as a result of bona fide dispute;

(B) Being unable to pay ~~((his or her))~~ debts as they become due; or ~~((is))~~

(C) Being insolvent within the meaning of ~~((the))~~ federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government ~~((and)),~~ The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more ~~((nations))~~ countries.

(25) ((A person has "notice" of a fact when

(a) he or she has actual knowledge of it; or

(b) he or she has received a notice or notification of it; or

(c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his or her attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28)) "Organization" ((includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity)) means a person other than an individual.

~~((29))~~ (26) "Party,"((s)) as ~~((distinct))~~ distinguished from "third party,"((s)) means a person ~~((who))~~ that has engaged in a transaction or made an agreement ~~((within))~~ subject to this title.

~~((30))~~ (27) "Person" ((includes)) means an individual ((or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32)) corporation, business trust, estate, trust, partnership,

limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" ((includes)) means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or ((re-issue)) reissue, gift, or any other voluntary transaction creating an interest in property.

~~((33))~~ (30) "Purchaser" means a person ~~((who))~~ that takes by purchase.

~~((34))~~ (31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

~~((35))~~ (33) "Representative" ~~((includes))~~ means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate ~~((, or any other person empowered to act for another)).~~

~~((36))~~ (34) "Right((s))" includes ~~((remedies))~~ remedy.

~~((37))~~ (35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation ~~((, except for lease purchase agreements under chapter 63.19 RCW. The term also)).~~ "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A of this title. "Security interest" does not include the special property interest of a buyer of goods on identification of ~~((such))~~ those goods to a contract for sale under RCW 62A.2-401 ~~((is not a "security interest"))~~, but a buyer may also acquire a "security interest" by complying with Article 9A of this title. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer ~~(())~~ under RCW 62A.2-401 ~~((s))~~ is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a ~~((lease or))~~ "security interest" is determined ~~((by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:~~

(a) ~~The original term of the lease is equal to or greater than the remaining economic life of the goods;~~

(b) ~~The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;~~

(c) ~~The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or~~

(d) ~~The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.~~

A transaction does not create a security interest merely because it provides that:

(a) ~~The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is~~

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substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) The lessee has an option to renew the lease or to become the owner of the goods;

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or

(f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into) pursuant to RCW 62A.1-203.

((38)) (36) "Send" in connection with ((any)) a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances((— The receipt of any writing)); or

(B) In any other way to cause to be received any record or notice within the time ((at which)) it would have arrived if properly sent ((has the effect of a proper sending)).

((39)) (37) "Signed" includes using any symbol executed or adopted ((by a party)) with present intention to ((authenticate)) adopt or accept a writing.

((40)) (38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

((41)) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42)) (40) "Term" means ((that)) a portion of an agreement ((which)) that relates to a particular matter.

((43)) (41) "Unauthorized((") signature\_" means ((one)) a signature made without actual, implied, or apparent authority ((and)). The term includes a forgery.

((44)) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-210, and RCW 62A.4-211) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45)) (42) "Warehouse receipt" means a ((receipt)) document of title issued by a person engaged in the business of storing goods for hire.

((46) — "Written" — or) (43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

**Sec. 110.** RCW 62A.1-202 and 1965 ex.s. c 157 s 1-202 are each amended to read as follows:

((PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS.)) NOTICE; KNOWLEDGE.((A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.)) (a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction

and that the transaction would be materially affected by the information.

**Sec. 111.** RCW 62A.1-203 and 1965 ex.s. c 157 s 1-203 are each amended to read as follows:

((OBLIGATION OF GOOD FAITH.)) LEASE DISTINGUISHED FROM SECURITY INTEREST.((Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement.)) (a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;

(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

**Sec. 112.** RCW 62A.1-204 and 1965 ex.s. c 157 s 1-204 are each amended to read as follows:

((TIME; REASONABLE TIME; "SEASONABLY.)) VALUE.((1) Whenever this Title requires any action to be taken

within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.)) Except as otherwise provided in Articles 3, 4, and 5 of this title, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

**Sec. 113.** RCW 62A.1-205 and 1965 ex.s. c 157 s 1-205 are each amended to read as follows:

((COURSE OF DEALING AND USAGE OF TRADE.)) REASONABLE TIME; SEASONABLENESS.((1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.)) (a) Whether a time for taking an action required by this title is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

**Sec. 114.** RCW 62A.1-206 and 1995 c 48 s 55 are each amended to read as follows:

((STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE COVERED.)) PRESUMPTIONS.((1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for

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the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-113) nor to security agreements (RCW 62A.9-203).) Whenever this title creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

**NEW SECTION. Sec. 115.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-301, to read as follows:

**TERRITORIAL APPLICABILITY; PARTIES' POWER TO CHOOSE APPLICABLE LAW.** (a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a) of this section, and except as provided in subsection (c) of this section, this title applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) RCW 62A.2-402;
- (2) RCW 62A.2A-105 and 62A.2A-106;
- (3) RCW 62A.4-102;
- (4) RCW 62A.4A-507;
- (5) RCW 62A.5-116;
- (6) RCW 62A.8-110;
- (7) RCW 62A.9A-301 through 62A.9A-307.

**NEW SECTION. Sec. 116.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-302, to read as follows:

**VARIATION BY AGREEMENT.** (a) Except as otherwise provided in subsection (b) of this section or elsewhere in this title, the effect of provisions of this title may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this title may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this title requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this title of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

**NEW SECTION. Sec. 117.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-303, to read as follows:

**COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE.** (a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

- (1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
- (2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the

transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to RCW 62A.2-209 and 62A.2A-208, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

**NEW SECTION. Sec. 118.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-304, to read as follows:

**OBLIGATION OF GOOD FAITH.** Every contract or duty within this title imposes an obligation of good faith in its performance and enforcement.

**NEW SECTION. Sec. 119.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-305, to read as follows:

**REMEDIES TO BE LIBERALLY ADMINISTERED.** (a) The remedies provided by this title must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this title or by other rule of law.

(b) Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

**NEW SECTION. Sec. 120.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-306, to read as follows:

**WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.** A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

**NEW SECTION. Sec. 121.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-307, to read as follows:

**PRIMA FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS.** A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

**NEW SECTION. Sec. 122.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-308, to read as follows:

**PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.** (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

**NEW SECTION. Sec. 123.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-309, to read as follows:

**OPTION TO ACCELERATE AT WILL.** A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

**NEW SECTION. Sec. 124.** A new section is added to chapter 62A.1 RCW, to be codified as RCW 62A.1-310, to read as follows:

**SUBORDINATED OBLIGATIONS.** An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

## PART II AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 7 GENERAL

**Sec. 201.** RCW 62A.7-101 and 1965 ex.s. c 157 s 7-101 are each amended to read as follows:

**SHORT TITLE.** This Article (~~shall be known and~~) may be cited as Uniform Commercial Code--Documents of Title.

**Sec. 202.** RCW 62A.7-102 and 2011 c 336 s 825 are each amended to read as follows:

**DEFINITIONS AND INDEX OF DEFINITIONS.** ((4)) (a) In this Article, unless the context otherwise requires:

((a)) (1) "Bailee" means ~~(the)~~ a person ~~(who)~~ that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

((b)) (2) "Carrier" means a person that issues a bill of lading.

(3) "Consignee" means ~~(the)~~ a person named in a bill of lading ~~(whom)~~ which or to whose order the bill promises delivery.

((c)) (4) "Consignor" means ~~(the)~~ a person named in a bill of lading as the person from ~~(whom)~~ which the goods have been received for shipment.

((d)) (5) "Delivery order" means a ~~(written)~~ record that contains an order to deliver goods directed to a warehouse ~~(operator)~~, carrier, or other person ~~(who)~~ that in the ordinary course of business issues warehouse receipts or bills of lading.

((e)) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

((f)) (6) [Reserved.]

(7) "Goods" means all things ~~(which)~~ that are treated as movable for the purposes of a contract ~~(of)~~ for storage or transportation.

((g)) (8) "Issuer" means a bailee ~~(who)~~ that issues a document ~~(except that)~~ of title or, in ~~(relation to)~~ the case of an unaccepted delivery order ~~(it means)~~, the person ~~(who)~~ that orders the possessor of goods to deliver. ~~(Issuer)~~ The term includes ~~(any)~~ a person for ~~(whom)~~ which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, ~~(notwithstanding that)~~ even if the issuer ~~(received no)~~ did not receive any goods ~~(or that)~~, the goods were misdescribed, or ~~(that)~~ in any other respect the agent or employee violated ~~(his or her)~~ the issuer's instructions.

((h)) (9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) [Reserved.]

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse ~~(operator)~~" ~~(is)~~ means a person engaged in the business of storing goods for hire.

((2)) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate." RCW 62A.7-501.

"Person entitled under the document." RCW 62A.7-403(4).

(3)) (b) Definitions in other articles applying to this Article and the sections in which they appear are:

(1) "Contract for sale~~(-)~~," RCW 62A.2-106~~(-~~

~~"Overseas."~~ RCW 62A.2-323~~);~~

(2) "Lessee in ordinary course of business," RCW 62A.2A-103; and

(3) "Receipt" of goods~~(-)~~, RCW 62A.2-103.

((4)) (c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 203.** RCW 62A.7-103 and 1965 ex.s. c 157 s 7-103 are each amended to read as follows:

**RELATION OF ARTICLE TO TREATY~~(-)~~ OR STATUTE~~(-)~~ (TARIFF, CLASSIFICATION OR REGULATION).** ~~(To the extent that)~~ (a) This Article is subject to any treaty or statute of the United States~~(-)~~ or regulatory statute of this state ~~(or tariff, classification or regulation filed or issued pursuant thereto)~~ to the extent the treaty, statute, or regulatory statute is applicable ~~(-the provisions of this Article are subject thereto)~~.

(b) This Article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this Article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

(d) A person in its capacity as an electronic data storage provider or an electronic data transmitter is not subject to this Article.

**Sec. 204.** RCW 62A.7-104 and 1965 ex.s. c 157 s 7-104 are each amended to read as follows:

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NEGOTIABLE AND NONNEGOTIABLE ((WAREHOUSE RECEIPT, BILL OF LADING OR OTHER)) DOCUMENT OF TITLE. ((1) A warehouse receipt, bill of lading or other document of title is negotiable)

(a) Except as otherwise provided in subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person~~((or~~

~~(b) where recognized in overseas trade, if it runs to a named person or assigns.~~

~~(2) Any other document).~~

(b) A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading ~~((in which it is stated))~~ that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against ~~((a written))~~ an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

**Sec. 205.** RCW 62A.7-105 and 1965 ex.s. c 157 s 7-105 are each amended to read as follows:

((CONSTRUCTION AGAINST NEGATIVE IMPLICATION.)) REISSUANCE IN ALTERNATIVE MEDIUM.~~((The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable.))~~

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

**NEW SECTION. Sec. 206.** A new section is added to chapter 62A.7 RCW, to be codified as RCW 62A.7-106, to read as follows:

**CONTROL OF ELECTRONIC DOCUMENT OF TITLE.** (a) A person has control of an electronic document of title if a system

employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

**PART III**

**AMENDMENTS TO UNIFORM COMMERCIAL CODE**

**ARTICLE 7**

**WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**

**Sec. 301.** RCW 62A.7-201 and 2011 c 336 s 826 are each amended to read as follows:

~~((WHO))~~ PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER ((GOVERNMENT)) BOND.

~~((1))~~ (a) A warehouse receipt may be issued by any warehouse ((operator)).

~~((2) Where))~~ (b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods ~~((has like effect as))~~ is deemed to be a warehouse receipt even ~~((though))~~ if issued by a person ~~((who))~~ that is the owner of the goods and is not a warehouse ~~((operator)).~~

**Sec. 302.** RCW 62A.7-202 and 2011 c 336 s 827 are each amended to read as follows:

FORM OF WAREHOUSE RECEIPT; ((ESSENTIAL TERMS; OPTIONAL TERMS)) EFFECT OF OMISSION.

~~((1))~~ (a) A warehouse receipt need not be in any particular form.

~~((2))~~ (b) Unless a warehouse receipt ((embodies within its written, printed, or electronic terms)) provides for each of the following, the warehouse ((operator)) is liable for damages caused ((by the omission)) to a person injured ((thereby)) by its omission:

~~((1))~~ (1) A statement of the location of the warehouse facility where the goods are stored;

~~((2))~~ (2) The date of issue of the receipt;

~~((3))~~ (3) The ((consecutive number)) unique identification code of the receipt;

~~((4))~~ (4) A statement whether the goods received will be delivered to the bearer, to a ((specified)) named person, or to a ((specified)) named person or ((his or her)) its order;

~~((5))~~ (5) The rate of storage and handling charges, ((except that where)) unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

~~((f)) (6)~~ A description of the goods or ~~((e))~~ the packages containing them;

~~((g)) (7)~~ The signature of the warehouse ~~((operator, which may be made by his or her authorized))~~ or its agent;

~~((h)) (8)~~ If the receipt is issued for goods ~~((of which the warehouse operator is owner))~~ that the warehouse owns, either solely ~~((e))~~, jointly, or in common with others, a statement of the fact of ~~((such))~~ that ownership; and

~~((i)) (9)~~ A statement of the amount of advances made and of liabilities incurred for which the warehouse ~~((operator))~~ claims a lien or security interest ~~((RCW 62A.7-209. If))~~, unless the precise amount of ~~((such))~~ advances made or ~~((of such))~~ liabilities incurred ~~((is))~~, at the time of the issue of the receipt, is unknown to the warehouse ~~((operator))~~ or to ~~((his or her))~~ its agent ~~((who issues it))~~ that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose ~~((thereof))~~ of the advances or liabilities is sufficient.

~~((3)) (c)~~ A warehouse ~~((operator))~~ may insert in ~~((his or her))~~ its receipt any ~~((other))~~ terms ~~((which))~~ that are not contrary to the provisions of this title and do not impair ~~((his or her))~~ its obligation of delivery ~~((f))~~ under RCW 62A.7-403 ~~((or his or her))~~ or its duty of care ~~((f))~~ under RCW 62A.7-204 ~~((g))~~. Any contrary provision ~~((s shall be))~~ is ineffective.

**Sec. 303.** RCW 62A.7-203 and 1965 ex.s. c 157 s 7-203 are each amended to read as follows:

#### LIABILITY FOR NONRECEIPT OR MISDESCRIPTION.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading ~~((relying in either case))~~, that relies upon the description ~~((therein))~~ of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether ~~((any))~~ all or part ~~((or all))~~ of the goods in fact were received or conform to the description, such as ~~((where))~~ a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or ~~((the like))~~ words of similar import, if ~~((such))~~ the indication ~~((be))~~ is true ~~((:))~~; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

**Sec. 304.** RCW 62A.7-204 and 2011 c 336 s 828 are each amended to read as follows:

**DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSE'S ~~((OPERATOR'S))~~ LIABILITY.** ~~((4)) (a)~~ A warehouse ~~((operator))~~ is liable for damages for loss of or injury to the goods caused by ~~((his or her))~~ its failure to exercise ~~((such))~~ care ~~((in))~~ with regard to ~~((them as))~~ the goods that a reasonably careful person would exercise under ~~((like))~~ similar circumstances ~~((but))~~. Unless otherwise agreed ~~((he or she))~~, the warehouse is not liable for damages ~~((which))~~ that could not have been avoided by the exercise of ~~((such))~~ that care.

~~((2)) (b)~~ Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage ~~((, and setting forth a specific liability per article or item, or value per unit of weight,))~~ beyond which the warehouse ~~((operator shall not be))~~ is not liable ~~((; provided, however, that such liability may on written))~~. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing ~~((such))~~ the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods ~~((thereunder, in which))~~ covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on ~~((such))~~ an increased valuation ~~((, but that no such increase shall be permitted contrary to a~~

~~lawful limitation of liability contained in the warehouse operator's tariff, if any. No such limitation is effective with respect to the warehouse operator's liability for conversion to his or her own use) of the goods.~~

~~((3)) (c)~~ Reasonable provisions as to the time and manner of presenting claims and ~~((instituting))~~ commencing actions based on the bailment may be included in the warehouse receipt or ~~((tariff))~~ storage agreement.

~~((4)) (d)~~ This section does not ~~((impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in))~~ modify or repeal the provisions of chapters 22.09 and 22.32 RCW.

**Sec. 305.** RCW 62A.7-205 and 2011 c 336 s 829 are each amended to read as follows:

**TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES.** A buyer in ~~((the))~~ ordinary course of business of fungible goods sold and delivered by a warehouse ~~((operator who))~~ that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even ~~((though it))~~ if the receipt is negotiable and has been duly negotiated.

**Sec. 306.** RCW 62A.7-206 and 2011 c 336 s 830 are each amended to read as follows:

**TERMINATION OF STORAGE AT ~~((WAREHOUSE OPERATOR'S))~~ WAREHOUSE'S OPTION.** ~~((4)) (a)~~ A warehouse ~~((operator may on notifying))~~, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document ~~((:))~~ of title or, if ~~((no))~~ a period is not fixed, within a stated period not less than thirty days after the ~~((notification))~~ warehouse gives notice. If the goods are not removed before the date specified in the ~~((notification))~~ notice, the warehouse ~~((operator))~~ may sell them ~~((in accordance with the provisions of the section on enforcement of a warehouse operator's lien))~~ pursuant to RCW 62A.7-210 ~~((g))~~.

~~((2)) (b)~~ If a warehouse ~~((operator))~~ in good faith believes that ~~((the))~~ goods are about to deteriorate or decline in value to less than the amount of ~~((his or her))~~ its lien within the time ~~((prescribed))~~ provided in subsection ~~((4)) (a)~~ of this section ~~((for notification, advertisement, and sale))~~ and RCW 62A.7-210, the warehouse ~~((operator))~~ may specify in the ~~((notification))~~ notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and ~~((in case))~~, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

~~((3)) (c)~~ If, as a result of a quality or condition of the goods of which the warehouse ~~((operator had no))~~ did not have notice at the time of deposit, the goods are a hazard to other property ~~((or to))~~, the warehouse facilities, or ~~((to))~~ other persons, the warehouse ~~((operator))~~ may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse ~~((operator))~~, after a reasonable effort, is unable to sell the goods ~~((he or she))~~, it may dispose of them in any lawful manner and ~~((shall))~~ does not incur ~~((no))~~ liability by reason of ~~((such))~~ that disposition.

~~((4)) (d)~~ The warehouse ~~((operator must))~~ shall deliver the goods to any person entitled to them under this Article upon due demand made at any time ~~((prior to))~~ before sale or other disposition under this section.

~~((5)) (e)~~ The warehouse ~~((operator))~~ may satisfy ~~((his or her))~~ its lien from the proceeds of any sale or disposition under this section but ~~((must))~~ shall hold the balance for delivery on the demand of any person to ~~((whom he or she))~~ which the warehouse would have been bound to deliver the goods.

**Sec. 307.** RCW 62A.7-207 and 2011 c 336 s 831 are each amended to read as follows:

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**GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.**

~~((4))~~ (a) Unless the warehouse receipt provides otherwise ~~((provides))~~, a warehouse ~~((operator must))~~ shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods ~~((except that))~~; However, different lots of fungible goods may be commingled.

~~((2))~~ (b) If different lots of fungible goods ~~((se))~~ are commingled, the goods are owned in common by the persons entitled thereto and the warehouse ~~((operator))~~ is severally liable to each owner for that owner's share. ~~((Where))~~ If, because of over-issue, a mass of fungible goods is insufficient to meet all the receipts ~~((which))~~ the warehouse ~~((operator))~~ has issued against it, the persons entitled include all holders to ~~((whom))~~ which overissued receipts have been duly negotiated.

**Sec. 308.** RCW 62A.7-208 and 1965 ex.s. c 157 s 7-208 are each amended to read as follows:

**ALTERED WAREHOUSE RECEIPTS.** ~~((Where))~~ If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the ~~((want))~~ lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

**Sec. 309.** RCW 62A.7-209 and 2011 c 336 s 832 are each amended to read as follows:

**LIEN OF WAREHOUSE ((OPERATOR)).** ~~((4))~~ (a) A warehouse ~~((operator))~~ has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in ~~((his or her))~~ its possession for charges for storage or transportation ~~((t))~~, including demurrage and terminal charges~~((t))~~, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for ~~((like))~~ similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse ~~((operator))~~ also has a lien against ~~((him or her))~~ the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for ~~((such))~~ those charges and expenses, whether or not the other goods have been delivered by the warehouse ~~((operator))~~. ~~((But))~~ However, as against a person to ~~((whom))~~ which a negotiable warehouse receipt is duly negotiated, a ~~((warehouse operator's))~~ warehouse's lien is limited to charges in an amount or at a rate specified ~~((on))~~ in the warehouse receipt or, if no charges are so specified ~~((then))~~, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt. A ~~((warehouse operator's))~~ warehouse's lien as provided in this chapter takes priority over all other liens and perfected or unperfected security interests.

~~((2))~~ (b) The warehouse ~~((operator))~~ may also reserve a security interest against the bailor for ~~((a))~~ the maximum amount specified on the receipt for charges other than those specified in subsection ~~((4))~~ (a) of this section, such as for money advanced and interest. ~~((Such a))~~ The security interest is governed by ~~((the Article on Secured Transactions (Article 9)))~~ Article 9A of this title.

~~((3))~~ (c) A ~~((warehouse operator's))~~ warehouse's lien for charges and expenses under subsection ~~((4))~~ (a) of this section or a security interest under subsection ~~((2))~~ (b) of this section is also effective against any person ~~((who))~~ that so entrusted the bailor with possession of the goods that a pledge of them by ~~((him or her))~~ the bailor to a good-faith purchaser for value would have been valid ~~((but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503)).~~

~~((4))~~ A warehouse operator loses his or her lien on any goods which he or she voluntarily delivers or which he or she ~~((However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:~~

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under RCW 62A.7-403; or

(C) Power of disposition under RCW 62A.2-403, 62A.2A-304(2), 62A.2A-305(2), 62A.9A-320, or 62A.9A-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

**Sec. 310.** RCW 62A.7-210 and 2011 c 336 s 833 are each amended to read as follows:

**ENFORCEMENT OF WAREHOUSE ((OPERATOR'S)) LIEN.** ~~((4))~~ (a) Except as otherwise provided in subsection ~~((2))~~ (b) of this section, a ~~((warehouse operator's))~~ warehouse's lien may be enforced by public or private sale of the goods, in ~~((bale))~~ bulk or in ~~((parcels))~~ packages, at any time or place and on any terms ~~((which))~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~((Such))~~ The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a ~~((different))~~ different method different from that selected by the warehouse ~~((operator))~~ is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse ~~((operator either))~~ sells the goods in the usual manner in any recognized market therefor, ~~((or if he or she))~~ sells at the price current in ~~((such))~~ that market at the time of ~~((his or her))~~ the sale, or ~~((if he or she has))~~ otherwise ~~((sold))~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold~~((, he or she has sold in a commercially reasonable manner))~~. A sale of more goods than apparently necessary to be offered to ~~((insure))~~ ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

~~((2))~~ (b) A warehouse ~~((operator's))~~ may enforce its lien on goods, other than goods stored by a merchant in the course of ~~((his or her))~~ its business ~~((may be enforced))~~, only ~~((as follows))~~ if the following requirements are satisfied:

~~((a))~~ (1) All persons known to claim an interest in the goods must be notified.

~~((b))~~ (2) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

~~((c))~~ (2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

~~((4))~~ (3) The sale must conform to the terms of the notification.

~~((4))~~ (4) The sale must be held at the nearest suitable place to that where the goods are held or stored.

~~((5))~~ (5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account ~~((they))~~ the goods are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not ~~((less))~~ fewer than six conspicuous places in the neighborhood of the proposed sale.

~~((3))~~ (c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~((under))~~ in complying with this section. In that event, the goods ~~((must))~~ may not be sold, but must be retained by the warehouse ~~((operator))~~ subject to the terms of the receipt and this Article.

~~((4))~~ (d) A warehouse ~~((operator))~~ may buy at any public sale held pursuant to this section.

~~((5))~~ (e) A purchaser in good faith of goods sold to enforce a ~~((warehouse operator's))~~ warehouse's lien takes the goods free of any rights of persons against ~~((whom))~~ which the lien was valid, despite the warehouse's noncompliance ~~((by the warehouse operator))~~ with ~~((the requirements of))~~ this section.

~~((6))~~ (f) A warehouse ~~((operator))~~ may satisfy ~~((his or her))~~ its lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to ~~((whom he or she))~~ which the warehouse would have been bound to deliver the goods.

~~((7))~~ (g) The rights provided by this section ~~((shall be))~~ are in addition to all other rights allowed by law to a creditor against ~~((his or her))~~ a debtor.

~~((8))~~ (h) If a lien is on goods stored by a merchant in the course of ~~((his or her))~~ its business, the lien may be enforced in accordance with either subsection ~~((1) or (2))~~ (a) or (b) of this section.

~~((9))~~ (i) A warehouse ~~((operator))~~ is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

**PART IV**  
**AMENDMENTS TO UNIFORM COMMERCIAL CODE**  
**ARTICLE 7**  
**BILLS OF LADING: SPECIAL PROVISIONS**

**Sec. 401.** RCW 62A.7-301 and 1965 ex.s. c 157 s 7-301 are each amended to read as follows:

**LIABILITY FOR NONRECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S WEIGHT, LOAD, AND COUNT"; IMPROPER HANDLING.** ~~((1))~~ (a) A consignee of a nonnegotiable bill ~~((who))~~ of lading which has given value in good faith, or a holder to ~~((whom))~~ which a negotiable bill has been duly negotiated, relying ~~((in either case))~~ upon the description ~~((therein))~~ of the goods ~~((:))~~ in the bill or upon the date ~~((therein))~~ shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the ~~((document))~~ bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as ~~((where))~~ in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," ~~((:))~~ "said to contain," ~~((:))~~ "shipper's weight, load, and count," or ~~((the like))~~ words of similar import, if ~~((such))~~ that indication ~~((be))~~ is true.

~~((2))~~ (b) If goods are loaded by ~~((an))~~ the issuer ~~((who is a common carrier))~~ of a bill of lading:

(1) The issuer ~~((must))~~ shall count the packages of goods if ~~((package freight))~~ shipped in packages and ascertain the kind and quantity if shipped in bulk ~~((freight. In))~~; and

(2) Words such ~~((eases))~~ as "shipper's weight, load, and count," or ~~((other))~~ words of similar import indicating that the description was made by the shipper are ineffective except as to ~~((freight))~~ goods concealed ~~((by))~~ in packages.

~~((3))~~ (c) If bulk ~~((freight is))~~ goods are loaded by a shipper ~~((who))~~ that makes available to the issuer of a bill of lading adequate facilities for weighing ~~((such freight, an))~~ those goods, the issuer ~~((who is a common carrier must))~~ shall ascertain the kind and quantity within a reasonable time after receiving the ~~((written))~~ shipper's request ~~((of the shipper))~~ in a record to do so. ~~((In such cases))~~ In that case, "shipper's weight" or ~~((other))~~ words of ~~((like purpose))~~ similar import are ineffective.

~~((4))~~ (d) The issuer ~~((may))~~ of a bill of lading, by ~~((inserting))~~ including in the bill the words "shipper's weight, load, and count," or ~~((other))~~ words of ~~((like purpose))~~ similar import, may indicate that the goods were loaded by the shipper ~~((:))~~, and, if ~~((such))~~ that statement ~~((be))~~ is true, the issuer ~~((shall))~~ is not ~~((be))~~ liable for damages caused by the improper loading. ~~((But their))~~ However, omission of such words does not imply liability for ~~((such))~~ damages caused by improper loading.

~~((5))~~ (e) A shipper ~~((shall be deemed to have guaranteed to the))~~ guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by ~~((him))~~ the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in ~~((such))~~ those particulars. ~~((The))~~ This right of ~~((the issuer to such))~~ indemnity ~~((shall in no way))~~ does not limit ~~((his))~~ the issuer's responsibility ~~((and))~~ or liability under the contract of carriage to any person other than the shipper.

**Sec. 402.** RCW 62A.7-302 and 1965 ex.s. c 157 s 7-302 are each amended to read as follows:

**THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE.** ~~((1))~~ (a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by ~~((persons))~~ a person acting as its agent(s) or by ~~((connecting carriers))~~ a performing carrier, is liable to ~~((anyone))~~ any person entitled to recover on the bill or other document for any breach by ~~((such other persons or by a connecting))~~ the other person or the performing carrier of its obligation under the bill or other document ~~((but))~~. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

~~((2))~~ (b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by ~~((persons))~~ a person other than the issuer are received by ~~((any such))~~ that person, ~~((he))~~ the person is subject, with respect to ~~((his))~~ its own performance while the goods are in ~~((his))~~ its possession, to the obligation of the issuer. ~~((His))~~ The person's obligation is discharged by delivery of the goods to another ~~((such))~~ person pursuant to the bill or other document ~~((:))~~ and does not include liability for breach by any other ~~((such))~~ person(s) or by the issuer.

~~((3))~~ (c) The issuer of ~~((such))~~ a through bill of lading or other document ~~((shall be))~~ of title described in subsection (a) of this section is entitled to recover from the ~~((connecting))~~ performing carrier, or ~~((such))~~ other person in possession of the goods when the breach of the obligation under the bill or other document occurred ~~((:))~~;

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(1) The amount it may be required to pay to ~~((anyone))~~ any person entitled to recover on the bill or other document ~~((therefor))~~ for the breach, as may be evidenced by any receipt, judgment, or transcript ~~((thereof, and))~~ of judgment; and

(2) The amount of any expense reasonably incurred by ~~((it))~~ the issuer in defending any action ~~((brought))~~ commenced by ~~((anyone))~~ any person entitled to recover on the bill or other document ~~((therefor))~~ for the breach.

**Sec. 403.** RCW 62A.7-303 and 1965 ex.s. c 157 s 7-303 are each amended to read as follows:

DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS. ~~((H))~~ (a) Unless the bill of lading otherwise provides, ~~((the))~~ a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

~~((A))~~ (1) The holder of a negotiable bill; ~~((or~~

~~((B))~~ (2) The consignor on a nonnegotiable bill ~~((notwithstanding))~~, even if the consignee has given contrary instructions ~~((from the consignee))~~; ~~((or~~

~~((C))~~ (3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

~~((D))~~ (4) The consignee on a nonnegotiable bill, if ~~((he))~~ the consignee is entitled as against the consignor to dispose of ~~((them))~~ the goods.

~~((2))~~ (b) Unless ~~((such))~~ instructions described in subsection (a) of this section are ~~((noted on))~~ included in a negotiable bill of lading, a person to ~~((whom))~~ which the bill is duly negotiated ~~((can))~~ may hold the bailee according to the original terms.

**Sec. 404.** RCW 62A.7-304 and 1965 ex.s. c 157 s 7-304 are each amended to read as follows:

TANGIBLE BILLS OF LADING IN A SET. ~~((H))~~ (a) Except ~~((where))~~ as customary in ~~((overseas))~~ international transportation, a tangible bill of lading ~~((must))~~ may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

~~((2-Where))~~ (b) If a tangible bill of lading is lawfully ~~((drawn))~~ issued in a set of parts, each of which ~~((is numbered))~~ contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

~~((3-Where))~~ (c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to ~~((whom))~~ which the first due negotiation is made prevails as to both the document of title and the goods even ~~((though))~~ if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by ~~((surrender of his))~~ surrendering its part.

~~((4-Any))~~ (d) A person ~~((who))~~ that negotiates or transfers a single part of a tangible bill of lading ~~((drawn))~~ issued in a set is liable to holders of that part as if it were the whole set.

~~((5))~~ (e) The bailee ~~((is obliged to))~~ shall deliver in accordance with ~~((Part 4 of this Article))~~ RCW 62A.7-401 through 62A.7-404 against the first presented part of a tangible bill of lading lawfully ~~((drawn))~~ issued in a set. ~~((Such))~~ Delivery in this manner discharges the bailee's obligation on the whole bill.

**Sec. 405.** RCW 62A.7-305 and 1965 ex.s. c 157 s 7-305 are each amended to read as follows:

DESTINATION BILLS. ~~((H))~~ (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier ~~((may))~~, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

~~((2))~~ (b) Upon request of ~~((anyone))~~ any person entitled as against ~~((the))~~ a carrier to control the goods while in transit and on

surrender of possession or control of any outstanding bill of lading or other receipt covering ~~((such))~~ the goods, the issuer, subject to RCW 62A.7-105, may procure a substitute bill to be issued at any place designated in the request.

**Sec. 406.** RCW 62A.7-307 and 1965 ex.s. c 157 s 7-307 are each amended to read as follows:

LIEN OF CARRIER. ~~((H))~~ (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges ~~((subsequent to))~~ after the date of ~~((its))~~ the carrier's receipt of the goods for storage or transportation ~~(()),~~ including demurrage and terminal charges~~((s))~~, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. ~~((But))~~ However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs~~((s))~~ or, if no charges are stated ~~((then to))~~, a reasonable charge.

~~((2))~~ (b) A lien for charges and expenses under subsection ~~((H))~~ (a) of this section on goods ~~((which))~~ that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to ~~((such))~~ those charges and expenses. Any other lien under subsection ~~((H))~~ (a) of this section is effective against the consignor and any person ~~((who))~~ that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked ~~((such))~~ authority.

~~((3))~~ (c) A carrier loses ~~((his))~~ its lien on any goods ~~((which he))~~ that it voluntarily delivers or ~~((which he))~~ unjustifiably refuses to deliver.

**Sec. 407.** RCW 62A.7-308 and 1965 ex.s. c 157 s 7-308 are each amended to read as follows:

ENFORCEMENT OF CARRIER'S LIEN. ~~((H))~~ (a) A carrier's lien on goods may be enforced by public or private sale of the goods, in ~~((blo))~~ bulk or in ~~((parcels))~~ packages, at any time or place and on any terms ~~((which))~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~((Such))~~ The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different ~~((method))~~ from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier ~~((either))~~ sells the goods in the usual manner in any recognized market therefor ~~((or if he))~~, sells at the price current in ~~((such))~~ that market at the time of ~~((his))~~ the sale, or ~~((if he has))~~ otherwise ~~((sold))~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold ~~((he has sold in a commercially reasonable manner))~~. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

~~((2))~~ (b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~((under))~~ in complying with this section. In that event, the goods ~~((must))~~ may not be sold~~((s))~~ but must be retained by the carrier, subject to the terms of the bill of lading and this Article.

~~((3-The))~~ (c) A carrier may buy at any public sale pursuant to this section.

~~((4))~~ (d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against ~~((whom))~~ which the lien was valid, despite the carrier's

noncompliance ~~((by the carrier))~~ with ~~((the requirements of))~~ this section.

~~((5))~~ ~~The~~ (e) A carrier may satisfy ~~((his))~~ its lien from the proceeds of any sale pursuant to this section but ~~((must))~~ shall hold the balance, if any, for delivery on demand to any person to ~~((whom he))~~ which the carrier would have been bound to deliver the goods.

~~((6))~~ ~~(f)~~ The rights provided by this section ~~((shall be))~~ are in addition to all other rights allowed by law to a creditor against ~~((his))~~ a debtor.

~~((7))~~ ~~(g)~~ A carrier's lien may be enforced ~~((in accordance with))~~ pursuant to either subsection ~~((4))~~ (a) of this section or the procedure set forth in ~~((subsection (2) of))~~ RCW 62A.7-210(b).

~~((8))~~ ~~The~~ (h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

**Sec. 408.** RCW 62A.7-309 and 2009 c 549 s 1017 are each amended to read as follows:

**DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.** Save as otherwise provided in RCW 81.29.010 and 81.29.020:

~~((4))~~ (a) A carrier ~~((who))~~ that issues a bill of lading, whether negotiable or nonnegotiable, ~~((must))~~ shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under ~~((like))~~ similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

~~((2))~~ (b) Damages may be limited by a ~~((provision))~~ term in the bill of lading or in a transportation agreement that the carrier's liability ~~((shall))~~ may not exceed a value stated in the ~~((document))~~ bill of lading or transportation agreement if the carrier's rates are dependent upon value and the consignor ~~((by the carrier's tariff))~~ is afforded an opportunity to declare a higher value ~~((or a value as lawfully provided in the tariff, or where no tariff))~~ and the consignor is ~~((filed he or she is otherwise))~~ advised of ~~((such))~~ the opportunity ~~((; but no)).~~ However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

~~((3))~~ (c) Reasonable provisions as to the time and manner of presenting claims and ~~((instituting))~~ commencing actions based on the shipment may be included in a bill of lading or ~~((tariff))~~ a transportation agreement.

**PART V  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 7  
WAREHOUSE RECEIPTS AND BILLS OF LADING:  
GENERAL OBLIGATIONS**

**Sec. 501.** RCW 62A.7-401 and 2011 c 336 s 834 are each amended to read as follows:

**IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER.** The obligations imposed by this Article on an issuer apply to a document of title ~~((regardless of the fact that))~~ even if:

~~((a))~~ (1) The document ~~((may))~~ does not comply with the requirements of this Article or of any other ~~((law))~~ statute, rule, or regulation regarding its ~~((issue))~~ issuance, form, or content; ~~((or~~

~~((b))~~ (2) The issuer ~~((may have))~~ violated laws regulating the conduct of ~~((his or her))~~ its business; ~~((or~~

~~((c))~~ (3) The goods covered by the document were owned by the bailee ~~((at the time))~~ when the document was issued; or

~~((d))~~ (4) The person issuing the document ~~((does not come within the definition of warehouse operator if it))~~ is not a warehouse but the document purports to be a warehouse receipt.

**Sec. 502.** RCW 62A.7-402 and 1965 ex.s. c 157 s 7-402 are each amended to read as follows:

**DUPLICATE ~~((RECEIPT OR BILL))~~ DOCUMENT OF TITLE; OVERISSUANCE.** ~~((Neither))~~ A duplicate ~~((nor))~~ or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer~~((s))~~ any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods ~~((and)),~~ substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to RCW 62A.7-105. ~~((But))~~ The issuer is liable for damages caused by ~~((his))~~ its overissue or failure to identify a duplicate document ~~((as such))~~ by a conspicuous notation ~~((on its face)).~~

**Sec. 503.** RCW 62A.7-403 and 2011 c 336 s 835 are each amended to read as follows:

**OBLIGATION OF ~~((WAREHOUSE OPERATOR OR CARRIER))~~ BAILEE TO DELIVER; EXCUSE.** ~~((4))~~ ~~The~~ (a) A bailee ~~((must))~~ shall deliver the goods to a person entitled under ~~((the))~~ a document ~~((who))~~ of title if the person complies with subsections ~~((2) and (3))~~ (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

~~((a))~~ (1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

~~((b))~~ (2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

~~((c))~~ (3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on ~~((warehouse operator's))~~ a warehouse's lawful termination of storage;

~~((d))~~ (4) The exercise by a seller of ~~((his or her))~~ its right to stop delivery pursuant to ~~((the provisions of the Article on Sales~~ (4)) RCW 62A.2-705 ~~((or))~~ or by a lessor of its right to stop delivery pursuant to RCW 62A.2A-526;

~~((e))~~ (5) A diversion, reconsignment, or other disposition pursuant to ~~((the provisions of this Article (4))~~ RCW 62A.7-303 ~~((or tariff regulating such right));~~

~~((f))~~ (6) Release, satisfaction, or any other ~~((fact affording a))~~ personal defense against the claimant; or

~~((g))~~ (7) Any other lawful excuse.

~~((2))~~ (b) A person claiming goods covered by a document of title ~~((must))~~ shall satisfy the bailee's lien ~~((where))~~ if the bailee so requests or ~~((where))~~ if the bailee is prohibited by law from delivering the goods until the charges are paid.

~~((3))~~ (c) Unless ~~((the))~~ a person claiming the goods is ~~((one))~~ a person against ~~((whom))~~ which the document ~~((confers no))~~ of title does not confer a right under RCW 62A.7-503 ~~((1)), he or she must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and))~~ (a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee ~~((must))~~ shall cancel the document or conspicuously ~~((note))~~ indicate in the document the partial delivery ~~((thereon or be))~~ or the bailee is liable to any person to ~~((whom))~~ which the document is duly negotiated.

((4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.)

**Sec. 504.** RCW 62A.7-404 and 1965 ex.s. c 157 s 7-404 are each amended to read as follows:

**NO LIABILITY FOR GOOD-FAITH DELIVERY PURSUANT TO ~~((RECEIPT OR BILL))~~ DOCUMENT OF TITLE.** A bailee ~~((who in))~~ that in good faith ~~((including observance of reasonable commercial standards))~~ has received goods and delivered or otherwise disposed of ~~((them))~~ the goods according to the terms of ~~((the))~~ a document of title or pursuant to this Article is not liable ~~((therefor. This rule applies even though))~~

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for the goods even if:

(1) The person from ~~((whom he))~~ which the bailee received the goods ~~((had no))~~ did not have authority to procure the document or to dispose of the goods ~~((and even though));~~ or

(2) The person to ~~((whom he))~~ which the bailee delivered the goods ~~((had no))~~ did not have authority to receive ~~((them))~~ the goods.

**PART VI  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 7  
WAREHOUSE RECEIPTS AND BILLS OF LADING:  
NEGOTIATION AND TRANSFER**

**Sec. 601.** RCW 62A.7-501 and 1965 ex.s. c 157 s 7-501 are each amended to read as follows:

FORM OF NEGOTIATION AND REQUIREMENTS OF ~~((DUE))~~ NEGOTIATION~~((S)).~~ ~~((H))~~ (a) The following rules apply to a negotiable tangible document of title ~~((running))~~:

(1) If the document's original terms run to the order of a named person, the document is negotiated by ~~((his))~~ the named person's indorsement and delivery. After ~~((his))~~ the named person's indorsement in blank or to bearer, any person ~~((can))~~ may negotiate ~~((it))~~ the document by delivery alone.

~~((2))~~ (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to ~~((him))~~ the named person, the effect is the same as if the document had been negotiated.

~~((3))~~ (4) Negotiation of ~~((a negotiable))~~ the document ~~((of title))~~ after it has been indorsed to a ~~((specified))~~ named person requires indorsement by the ~~((special indorsee as well as))~~ named person and delivery.

~~((4))~~ (5) A ~~((negotiable))~~ document ~~((of title))~~ is ~~((D))~~ duly negotiated ~~((when))~~ if it is negotiated in the manner stated in this ~~((section))~~ subsection to a holder ~~((who))~~ that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a ~~((money))~~ monetary obligation.

~~((5))~~ (b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

~~((6))~~ (d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill ~~((nor))~~ or constitute notice to a purchaser

~~((thereof))~~ of the bill of any interest of ~~((such))~~ that person in the goods.

**Sec. 602.** RCW 62A.7-502 and 1965 ex.s. c 157 s 7-502 are each amended to read as follows:

RIGHTS ACQUIRED BY DUE NEGOTIATION. ~~((H))~~ (a) Subject to ~~((the following section and to the provisions of))~~ RCW 62A.7-205 ~~((on fungible goods))~~ and 62A.7-503, a holder to ~~((whom))~~ which a negotiable document of title has been duly negotiated acquires thereby:

~~((a))~~ (1) Title to the document;

~~((b))~~ (2) Title to the goods;

~~((e))~~ (3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

~~((d))~~ (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by ~~((him))~~ the issuer except those arising under the terms of the document or under this Article~~((S))~~, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

~~((2))~~ (b) Subject to ~~((the following section))~~ RCW 62A.7-503, title and rights ~~((S))~~ acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of ~~((such))~~ the goods by the bailee~~((S))~~ and are not impaired even ~~((though))~~ if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty ~~((or even though));~~

(2) Any person has been deprived of possession of ~~((the))~~ a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion~~((S))~~; or ~~((even though))~~

(3) A previous sale or other transfer of the goods or document has been made to a third person.

**Sec. 603.** RCW 62A.7-503 and 2000 c 250 s 9A-814 are each amended to read as follows:

DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES. ~~((H))~~ (a) A document of title confers no right in goods against a person ~~((who))~~ that before issuance of the document had a legal interest or a perfected security interest in ~~((them and who neither))~~ the goods and that did not:

~~((a delivered or entrusted them))~~ (1) Deliver or entrust the goods or any document of title covering ~~((them))~~ the goods to the bailor or ~~((his))~~ the bailor's nominee with;

(A) Actual or apparent authority to ship, store, or sell ~~((or with));~~

(B) Power to obtain delivery under ~~((this Article (C))~~ RCW 62A.7-403~~((S))~~; or ~~((with))~~

(C) Power of disposition under ~~((this Title (C))~~ RCW 62A.2-403 ~~((and 62A.9A-320))~~, 62A.2A-304(2), 62A.2A-305(2), 62A.9A-320, or 62A.9A-321(c) or other statute or rule of law; ~~((nor))~~ or

~~((b acquiesced))~~ (2) Acquiesce in the procurement by the bailor or ~~((his))~~ its nominee of any document ~~((of title)).~~

~~((2))~~ (b) Title to goods based upon an unaccepted delivery order is subject to the rights of ~~((anyone to whom))~~ any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~((Such a))~~ That title may be defeated under ~~((the next section))~~ RCW 62A.7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

~~((3))~~ (c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of ~~((anyone to whom))~~ any person to which a bill issued by the freight forwarder is duly negotiated~~((; but))~~. However, delivery by the carrier in accordance

with ~~((Part 4 of this Article))~~ RCW 62A.7-401 through 62A.7-404 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

**Sec. 604.** RCW 62A.7-504 and 1965 ex.s. c 157 s 7-504 are each amended to read as follows:

RIGHTS ACQUIRED IN ~~((THE))~~ ABSENCE OF DUE NEGOTIATION; EFFECT OF DIVERSION; ~~((SELLER'S))~~ STOPPAGE OF DELIVERY. ~~((4))~~ (a) A transferee of a document of title, whether negotiable or nonnegotiable, to ~~((whom))~~ which the document has been delivered but not duly negotiated, acquires the title and rights ~~((which his))~~ that its transferor had or had actual authority to convey.

~~((2))~~ (b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives ~~((notification))~~ notice of the transfer, the rights of the transferee may be defeated:

~~((a))~~ (1) By those creditors of the transferor ((who)) which could treat the ((sale)) transfer as void under RCW ((62A.7-402; or) 62A.2-402 or 62A.2A-308;

~~((b))~~ (2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of ((his)) the buyer's rights; ((or  
~~((c))~~ (3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

~~((3))~~ (c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if ~~((they))~~ the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

~~((4))~~ (d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under RCW 62A.2-705~~((and))~~ or a lessor under RCW 62A.2A-526, subject to the requirements of due notification ~~((there provided))~~ in those statutes. A bailee ~~((honoring))~~ that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

**Sec. 605.** RCW 62A.7-505 and 1965 ex.s. c 157 s 7-505 are each amended to read as follows:

INDORSER NOT ((A)) GUARANTOR FOR OTHER PARTIES. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or ~~((by))~~ previous indorsers.

**Sec. 606.** RCW 62A.7-506 and 1965 ex.s. c 157 s 7-506 are each amended to read as follows:

DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL INDORSEMENT. The transferee of a negotiable tangible document of title has a specifically enforceable right to have ~~((his))~~ its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

**Sec. 607.** RCW 62A.7-507 and 1965 ex.s. c 157 s 7-507 are each amended to read as follows:

WARRANTIES ON NEGOTIATION OR ~~((TRANSFER OF RECEIPT OR BILL))~~ DELIVERY OF DOCUMENT OF TITLE. ~~((Where))~~ If a person negotiates or ~~((transfers))~~ delivers a document of title for value, otherwise than as a mere intermediary under ~~((the next following section, then))~~ RCW 62A.7-508, unless otherwise agreed ~~((he warrants to his immediate purchaser only)),~~ the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- ~~((a that))~~ (1) The document is genuine; ~~((and~~  
~~((b that he has no))~~ (2) The transferor does not have knowledge

of any fact ~~((which))~~ that would impair ~~((its))~~ the document's validity or worth; and

~~((e that his))~~ (3) The negotiation or ~~((transfer))~~ delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

**Sec. 608.** RCW 62A.7-508 and 1965 ex.s. c 157 s 7-508 are each amended to read as follows:

WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS OF TITLE. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by ~~((such))~~ the delivery of the documents only its own good faith and authority~~((—This rule applies))~~ even ~~((though))~~ if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

**Sec. 609.** RCW 62A.7-509 and 1965 ex.s. c 157 s 7-509 are each amended to read as follows:

~~((RECEIPT OR BILL: —WHEN))~~ ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT. ~~((The question))~~ Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is ~~((governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5)))~~ determined by Article 2, 2A, or 5 of this title.

## PART VII AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 7 WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

**Sec. 701.** RCW 62A.7-601 and 1965 ex.s. c 157 s 7-601 are each amended to read as follows:

LOST ~~((AND MISSING)),~~ STOLEN, OR DESTROYED DOCUMENTS OF TITLE. ~~((4))~~ (a) If a document ~~((has been))~~ of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with ~~((such))~~ the order. If the document was negotiable ~~((the claimant must post security approved by the))~~, a court ~~((to indemnify))~~ may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person ((who)) that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was ~~((not negotiable, such))~~ nonnegotiable, the court may require security ((may be required at the discretion of the court)). The court may also ~~((in its discretion))~~ order payment of the bailee's reasonable costs and ~~((counsel))~~ attorneys' fees in any action under this subsection.

~~((2))~~ (b) A bailee ~~((who))~~ that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby~~((and))~~. If the delivery is not in good faith ~~((becomes)),~~ the bailee is liable for conversion. Delivery in good faith is not conversion if ~~((made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if))~~ the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery ~~((who))~~ which files a notice of claim within one year after the delivery.

**Sec. 702.** RCW 62A.7-602 and 1965 ex.s. c 157 s 7-602 are each amended to read as follows:

~~((ATTACHMENT OF))~~ JUDICIAL PROCESS AGAINST GOODS COVERED BY ((A)) NEGOTIABLE DOCUMENT OF TITLE. ~~((Except where the))~~ Unless a document of title was originally issued upon delivery of the goods by a person ~~((who had~~

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~~ne)) that did not have~~ power to dispose of them, ~~((ne)) a~~ lien ~~((attaches)) does not attach~~ by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document ((be)) is first surrendered to the bailee or ((its)) the document's negotiation is enjoined((-and)). The bailee ~~((shall))~~ may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to ((him or impounded by)) the bailee or to the court. ~~((One who purchases))~~ A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

**Sec. 703.** RCW 62A.7-603 and 1965 ex.s. c 157 s 7-603 are each amended to read as follows:

**CONFLICTING CLAIMS; INTERPLEADER.** If more than one person claims title to or possession of the goods, the bailee is excused from delivery until ~~((he)) the bailee has ((had))~~ a reasonable time to ascertain the validity of the adverse claims or to ~~((bring an action to compel all claimants to interplead and may compel such))~~ commence an action for interpleader. The bailee may assert an interpleader~~((s))~~ either in defending an action for nondelivery of the goods~~((s))~~ or by original action~~((,- which ever is appropriate)).~~

**PART VIII  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 2**

**Sec. 801.** RCW 62A.2-103 and 2000 c 250 s 9A-803 are each amended to read as follows:

**DEFINITIONS AND INDEX OF DEFINITIONS.** (1) In this Article unless the context otherwise requires:

- (a) "Buyer" means a person who buys or contracts to buy goods.
- (b) ("Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.) [Reserved.]
- (c) "Receipt" of goods means taking physical possession of them.
- (d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance."	RCW 62A.2-606.
"Banker's credit."	RCW 62A.2-325.
"Between merchants."	RCW 62A.2-104.
"Cancellation."	RCW 62A.2-106(4).
"Commercial unit."	RCW 62A.2-105.
"Confirmed credit."	RCW 62A.2-325.
"Conforming to contract."	RCW 62A.2-106.
"Contract for sale."	RCW 62A.2-106.
"Cover."	RCW 62A.2-712.
"Entrusting."	RCW 62A.2-403.
"Financing agency."	RCW 62A.2-104.
"Future goods."	RCW 62A.2-105.
"Goods."	RCW 62A.2-105.

"Identification."	RCW 62A.2-501.
"Installment contract."	RCW 62A.2-612.
"Letter of credit."	RCW 62A.2-325.
"Lot."	RCW 62A.2-105.
"Merchant."	RCW 62A.2-104.
"Overseas."	RCW 62A.2-323.
"Person in position of seller."	RCW 62A.2-707.
"Present sale."	RCW 62A.2-106.
"Sale."	RCW 62A.2-106.
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Termination."	RCW 62A.2-106.

(3) "Control" as provided in RCW 62A.7-106 and the following definitions in other articles apply to this Article:

"Check."	RCW 62A.3-104.
"Consignee."	RCW 62A.7-102.
"Consignor."	RCW 62A.7-102.
"Consumer goods."	RCW 62A.9A-102.
"Dishonor."	RCW 62A.3-502.
"Draft."	RCW 62A.3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 802.** RCW 62A.2-104 and 1965 ex.s. c 157 s 2-104 are each amended to read as follows:

**DEFINITIONS:** "MERCHANT"; "BETWEEN MERCHANTS"; "FINANCING AGENCY."~~((s))~~ (1) "Merchant" means a person who deals in goods of the kind or otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his or her occupation holds himself or herself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

**Sec. 803.** RCW 62A.2-202 and 1965 ex.s. c 157 s 2-202 are each amended to read as follows:

FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented;

(a) By course of performance, course of dealing, or usage of trade (~~((RCW 62A.1-205) or by course of performance (RCW 62A.2-208)) (RCW 62A.1-303);~~ and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**Sec. 804.** RCW 62A.2-310 and 1965 ex.s. c 157 s 2-310 are each amended to read as follows:

OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT; AUTHORITY TO SHIP UNDER RESERVATION. Unless otherwise agreed;

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he or she may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) of this section then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents ((regardless of where the goods are to be received)) or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

**Sec. 805.** RCW 62A.2-323 and 1965 ex.s. c 157 s 2-323 are each amended to read as follows:

FORM OF BILL OF LADING REQUIRED IN OVERSEAS SHIPMENT; "OVERSEAS." (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) of this section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set;

(a) Due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery ((subsection (1) of) RCW 62A.2-508(1)); and

(b) Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

**Sec. 806.** RCW 62A.2-401 and 1965 ex.s. c 157 s 2-401 are each amended to read as follows:

PASSING OF TITLE; RESERVATION FOR SECURITY; LIMITED APPLICATION OF THIS SECTION. Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions Article 9A, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his or her performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading;

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods(☺);

(a) If the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale."(☺)

**Sec. 807.** RCW 62A.2-503 and 1965 ex.s. c 157 s 2-503 are each amended to read as follows:

MANNER OF SELLER'S TENDER OF DELIVERY. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him or her to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular;

(a) Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

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(3) Where the seller is required to deliver at a particular destination tender requires that he or she comply with subsection (1) of this section and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) Tender to the buyer of a nonnegotiable document of title or of a ~~((written direction to))~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9A of this title, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) He or she must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set ~~((subsection (2) of))~~ RCW 62A.2-323(2); and

(b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

**Sec. 808.** RCW 62A.2-505 and 1965 ex.s. c 157 s 2-505 are each amended to read as follows:

SELLER'S SHIPMENT UNDER RESERVATION. (1)

Where the seller has identified goods to the contract by or before shipment:

(a) His or her procurement of a negotiable bill of lading to his or her own order or otherwise reserves in him or her a security interest in the goods. His or her procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or herself or his or her nominee reserves possession of the goods as security but except in a case of conditional delivery ~~((subsection (2) of))~~ RCW 62A.2-507(2) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

**Sec. 809.** RCW 62A.2-506 and 1965 ex.s. c 157 s 2-506 are each amended to read as follows:

RIGHTS OF FINANCING AGENCY. (1) A financing agency

by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular ~~((on its face))~~.

**Sec. 810.** RCW 62A.2-509 and 1965 ex.s. c 157 s 2-509 are each amended to read as follows:

RISK OF LOSS IN THE ABSENCE OF BREACH. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) If it does not require him or her to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) If it does require him or her to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) On his or her receipt of possession or control of a negotiable document of title covering the goods; or

(b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) After his or her receipt of possession or control of a nonnegotiable document of title or other ~~((written))~~ direction to deliver in a record, as provided in ~~((subsection (4)(b) of))~~ RCW 62A.2-503(4)(b).

(3) In any case not within subsection (1) or (2) of this section, the risk of loss passes to the buyer on his or her receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510).

**Sec. 811.** RCW 62A.2-605 and 1965 ex.s. c 157 s 2-605 are each amended to read as follows:

WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him or her from relying on the unstated defect to justify rejection or to establish breach:

(a) Where the seller could have cured it if stated seasonably; or

(b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~((on the face of))~~ in the documents.

**Sec. 812.** RCW 62A.2-705 and 2011 c 336 s 823 are each amended to read as follows:

SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he or she discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload(;) or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) Receipt of the goods by the buyer; or

(b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) Such acknowledgment to the buyer by a carrier by reshipment or as a warehouse ~~((operator))~~; or

(d) Negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**PART IX  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 2A**

**Sec. 901.** RCW 62A.2A-103 and 2000 c 250 s 9A-808 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes (~~receiving~~) acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind(~~g~~) but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes (~~receiving~~) acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

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(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions."	RCW 62A.2A-310(1).
"Construction mortgage."	RCW 62A.2A-309(1)(d).
"Encumbrance."	RCW 62A.2A-309(1)(e).
"Fixtures."	RCW 62A.2A-309(1)(a).
"Fixture filing."	RCW 62A.2A-309(1)(b).
"Purchase money lease."	RCW 62A.2A-309(1)(c).

(3) The following definitions in other articles apply to this Article:

"Account."	RCW 62A.9A-102(a)(2).
"Between merchants."	RCW 62A.2-104(3).
"Buyer."	RCW 62A.2-103(1)(a).
"Chattel paper."	RCW 62A.9A-102(a)(11).
"Consumer goods."	RCW 62A.9A-102(a)(23).
"Document."	RCW 62A.9A-102(a)(30).
"Entrusting."	RCW 62A.2-403(3).
"General intangible."	RCW 62A.9A-102(a)(42).
("Good faith."	<del>RCW 62A.2-103(1)(b))</del>
"Instrument."	RCW 62A.9A-102(a)(47).
"Merchant."	RCW 62A.2-104(1).
"Mortgage."	RCW 62A.9A-102(a)(55).
"Pursuant to commitment."	RCW 62A.9A-102(a)(68).
"Receipt."	RCW 62A.2-103(1)(c).
"Sale."	RCW 62A.2-106(1).
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Seller."	RCW 62A.2-103(1)(d).

(4) In addition, Article ((~~62A.1 RCW~~) 1 of this title) contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 902.** RCW 62A.2A-103 and 2011 c 74 s 701 are each amended to read as follows:

**DEFINITIONS AND INDEX OF DEFINITIONS.** (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes ((~~receiving~~) acquiring) goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind(;) but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes ~~((receiving))~~ acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions."	RCW 62A.2A-310.
"Construction mortgage."	RCW 62A.2A-309.
"Encumbrance."	RCW 62A.2A-309.
"Fixtures."	RCW 62A.2A-309.
"Fixture filing."	RCW 62A.2A-309.
"Purchase money lease."	RCW 62A.2A-309.

(3) The following definitions in other articles apply to this Article:

"Account."	RCW 62A.9A-102.
"Between merchants."	RCW 62A.2-104.
"Buyer."	RCW 62A.2-103.
"Chattel paper."	RCW 62A.9A-102.
"Consumer goods."	RCW 62A.9A-102.
"Document."	RCW 62A.9A-102.
"Entrusting."	RCW 62A.2-403.
"General intangible."	RCW 62A.9A-102.
<del>((("Good faith."</del>	<del>RCW 62A.2-103.))</del>
"Instrument."	RCW 62A.9A-102.
"Merchant."	RCW 62A.2-104(1).
"Mortgage."	RCW 62A.9A-102.
"Pursuant to commitment."	RCW 62A.9A-102.
"Receipt."	RCW 62A.2-103.
"Sale."	RCW 62A.2-106.
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Seller."	RCW 62A.2-103.

(4) In addition, Article ~~((62A.1 RCW))~~ 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 903.** RCW 62A.2A-501 and 1993 c 230 s 2A-501 are each amended to read as follows:

**DEFAULT: PROCEDURE.** (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as

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provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in ~~((RCW 62A.1-106(4)))~~ RCW 62A.1-305(a) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part 5 as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part 5 does not apply.

**Sec. 904.** RCW 62A.2A-514 and 1993 c 230 s 2A-514 are each amended to read as follows:

**WAIVER OF LESSEE'S OBJECTIONS.** (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (RCW 62A.2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~((on the face of))~~ in the documents.

**Sec. 905.** RCW 62A.2A-518 and 1993 c 230 s 2A-518 are each amended to read as follows:

**COVER; SUBSTITUTE GOODS.** (1) After a default by a lessor under the lease contract of the type described in ~~((RCW 62A.2A-508(1)(9)))~~, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties ~~((RCW 62A.1-102(3)))~~ (RCW 62A.1-302 and 62A.2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and RCW 62A.2A-519 governs.

**Sec. 906.** RCW 62A.2A-519 and 1993 c 230 s 2A-519 are each amended to read as follows:

**LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement

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(RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties ~~((RCW 62A.1-102(3)))~~ (RCW 62A.1-302 and 62A.2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (RCW 62A.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

**Sec. 907.** RCW 62A.2A-526 and 2011 c 336 s 824 are each amended to read as follows:

**LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.** (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse ~~((operator))~~.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**Sec. 908.** RCW 62A.2A-527 and 1993 c 230 s 2A-527 are each amended to read as follows:

**LESSOR'S RIGHTS TO DISPOSE OF GOODS.** (1) After a default by a lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (~~(RCW 62A.1-102(3))~~) (RCW 62A.1-302 and 62A.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and RCW 62A.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (RCW 62A.2A-508(~~(5)~~)).

**Sec. 909.** RCW 62A.2A-528 and 1993 c 230 s 2A-528 are each amended to read as follows:

**LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (~~(RCW 62A.1-102(3))~~) (RCW 62A.1-302 and 62A.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under (i) of this subsection (~~((1)(i) of this section)~~) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under RCW 62A.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

**PART X  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 3**

**Sec. 1001.** RCW 62A.3-103 and 1993 c 229 s 5 are each amended to read as follows:

**DEFINITIONS.** (a) In this Article:

- (1) "Acceptor" means a drawee who has accepted a draft.
  - (2) "Drawee" means a person ordered in a draft to make payment.
  - (3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.
  - (4) ("Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]
  - (5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.
  - (6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
  - (7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.
  - (8) "Party" means a party to an instrument.
  - (9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
  - (10) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(b)(8)).
  - (11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.
- (b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.3-409
"Accommodated party"	RCW 62A.3-419
"Accommodation party"	RCW 62A.3-419
"Alteration"	RCW 62A.3-407
"Anomalous indorsement"	RCW 62A.3-205
"Blank indorsement"	RCW 62A.3-205
"Cashier's check"	RCW 62A.3-104
"Certificate of deposit"	RCW 62A.3-104
"Certified check"	RCW 62A.3-409
"Check"	RCW 62A.3-104

"Consideration"	RCW 62A.3-303
"Draft"	RCW 62A.3-104
"Holder in due course"	RCW 62A.3-302
"Incomplete instrument"	RCW 62A.3-115
"Indorsement"	RCW 62A.3-204
"Indorser"	RCW 62A.3-204
"Instrument"	RCW 62A.3-104
"Issue"	RCW 62A.3-105
"Issuer"	RCW 62A.3-105
"Negotiable instrument"	RCW 62A.3-104
"Negotiation"	RCW 62A.3-201
"Note"	RCW 62A.3-104
"Payable at a definite time"	RCW 62A.3-108
"Payable on demand"	RCW 62A.3-108
"Payable to bearer"	RCW 62A.3-109
"Payable to order"	RCW 62A.3-109
"Payment"	RCW 62A.3-602
"Person entitled to enforce"	RCW 62A.3-301
"Presentment"	RCW 62A.3-501
"Reacquisition"	RCW 62A.3-207
"Special indorsement"	RCW 62A.3-205
"Teller's check"	RCW 62A.3-104
"Transfer of instrument"	RCW 62A.3-203
"Traveler's check"	RCW 62A.3-104
"Value"	RCW 62A.3-303

"Intermediary bank"	RCW 62A.4-105
"Item"	RCW 62A.4-104
"Payor bank"	RCW 62A.4-105
"Suspends payments"	RCW 62A.4-104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**PART XI  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 4**

**Sec. 1101.** RCW 62A.4-104 and 1995 c 48 s 56 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this Article, unless the context otherwise requires:

- (1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;
- (2) "Afternoon" means the period of a day between noon and midnight;
- (3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;
- (4) "Clearing house" means an association of banks or other payors regularly clearing items;
- (5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;
- (6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (RCW 62A.8-102) or instructions for uncertificated securities (RCW 62A.8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;
- (7) "Draft" means a draft as defined in RCW 62A.3-104 or an item, other than an instrument, that is an order;
- (8) "Drawee" means a person ordered in a draft to make payment;
- (9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;
- (10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;
- (11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;
- (12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(c) The following definitions in other articles apply to this Article:

("Bank"	<del>RCW 62A.4-105</del> )
"Banking day"	RCW 62A.4-104
"Clearing house"	RCW 62A.4-104
"Collecting bank"	RCW 62A.4-105
"Depositary bank"	RCW 62A.4-105
"Documentary draft"	RCW 62A.4-104

- (10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;
  - (11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;
  - (12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.
- (b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	RCW 62A.4-110.
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"Bank"	RCW 62A.4-105.
"Collecting bank"	RCW 62A.4-105.
"Depository bank"	RCW 62A.4-105.
"Intermediary bank"	RCW 62A.4-105.
"Payor bank"	RCW 62A.4-105.
"Presenting bank"	RCW 62A.4-105.
"Presentment notice"	RCW 62A.4-110.

(c) "Control" as provided in RCW 62A.7-106 and the following definitions in other articles apply to this Article:

"Acceptance"	RCW 62A.3-409.
"Alteration"	RCW 62A.3-407.
"Cashier's check"	RCW 62A.3-104.
"Certificate of deposit"	RCW 62A.3-104.
"Certified check"	RCW 62A.3-409.
"Check"	RCW 62A.3-104.
"Draft"	RCW 62A.3-104.
("Good faith"	<del>RCW 62A.3-103.</del> )
"Holder in due course"	RCW 62A.3-302.
"Instrument"	RCW 62A.3-104.
"Notice of dishonor"	RCW 62A.3-503.
"Order"	RCW 62A.3-103.
"Ordinary care"	RCW 62A.3-103.
"Person entitled to enforce"	RCW 62A.3-301.
"Presentment"	RCW 62A.3-501.
"Promise"	RCW 62A.3-103.
"Prove"	RCW 62A.3-103.
"Teller's check"	RCW 62A.3-104.
"Unauthorized signature"	RCW 62A.3-403.

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 1102.** RCW 62A.4-210 and 2001 c 32 s 13 are each amended to read as follows:

**SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS.**

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9A, but:

(1) No security agreement is necessary to make the security interest enforceable (RCW 62A.9A-203(b)(3)(A));

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

**PART XII**

**AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 4A**

**Sec. 1201.** RCW 62A.4A-105 and 1991 sp.s. c 21 s 4A-105 are each amended to read as follows:

**OTHER DEFINITIONS.** (1) In this Article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of the account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) ("Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(b)(8)).

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.4A-209
"Beneficiary"	RCW 62A.4A-103

"Beneficiary's bank"	RCW 62A.4A-103
"Executed"	RCW 62A.4A-301
"Execution date"	RCW 62A.4A-301
"Funds transfer"	RCW 62A.4A-104
"Funds-transfer system rule"	RCW 62A.4A-501
"Intermediary bank"	RCW 62A.4A-104
"Originator"	RCW 62A.4A-104
"Originator's bank"	RCW 62A.4A-104
"Payment by beneficiary's bank to beneficiary"	RCW 62A.4A-405
"Payment by originator to beneficiary"	RCW 62A.4A-406
"Payment by sender to receiving bank"	RCW 62A.4A-403
"Payment date"	RCW 62A.4A-401
"Payment order"	RCW 62A.4A-103
"Receiving bank"	RCW 62A.4A-103
"Security procedure"	RCW 62A.4A-201
"Sender"	RCW 62A.4A-103

(3) The following definitions in Article 4 (RCW 62A.4-101 through 62A.4-504) apply to this Article:

"Clearing house"	<del>((section 4-104 of this act))</del> RCW 62A.4-104
"Item"	<del>((section 4-104 of this act))</del> RCW 62A.4-104
"Suspends payments"	<del>((section 4-104 of this act))</del> RCW 62A.4-104

(4) In addition ~~((to))~~, Article 1 ~~((RCW 62A.1-101 through 62A.1-208))~~ contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 1202.** RCW 62A.4A-106 and 1991 sp.s. c 21 s 4A-106 are each amended to read as follows:

**TIME PAYMENT ORDER IS RECEIVED.** (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~((RCW 62A.1-201(27)))~~ RCW 62A.1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

**Sec. 1203.** RCW 62A.4A-204 and 1991 sp.s. c 21 s 4A-204 are each amended to read as follows:

**REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER.** (1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (a) not authorized and not effective as the order of the customer under RCW 62A.4A-202, or (b) not enforceable, in whole or in part, against the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) of this section may be fixed by agreement as stated in ~~((RCW 62A.1-204(1)))~~ RCW 62A.1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (1) of this section may not otherwise be varied by agreement.

**PART XIII  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 5**

**Sec. 1301.** RCW 62A.5-103 and 1997 c 56 s 4 are each amended to read as follows:

**SCOPE.** ~~((1))~~ (a) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

~~((2))~~ (b) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

~~((3))~~ (c) With the exception of this subsection, subsections ~~((4))~~ (a) and ~~((4))~~ (d) of this section, RCW 62A.5-102~~((1))~~ (1), (a) (9) and ~~((1))~~ (10), 62A.5-106~~((4))~~ (d), and 62A.5-114~~((4))~~ (d), and except to the extent prohibited in ~~((RCW 62A.1-102(3)))~~ RCW 62A.1-302 and 62A.5-117~~((4))~~ (d), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

~~((4))~~ (d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

**PART XIV  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 8**

**Sec. 1401.** RCW 62A.8-102 and 1995 c 48 s 2 are each amended to read as follows:

**DEFINITIONS.** (1) In this Article:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including adoption of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of RCW 62A.8-501(2) (b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in RCW 62A.8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) ("Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or

redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in RCW 62A.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person	RCW 62A.8-107
Control	RCW 62A.8-106
Delivery	RCW 62A.8-301
Investment company security	RCW 62A.8-103
Issuer	RCW 62A.8-201
Overissue	RCW 62A.8-210
Protected purchaser	RCW 62A.8-303
Securities account	RCW 62A.8-501

(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

FIFTY SECOND DAY, FEBRUARY 29, 2012

2012 REGULAR SESSION

**Sec. 1402.** RCW 62A.8-103 and 2000 c 250 s 9A-815 are each amended to read as follows:

RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102(a)(15), is not a security or a financial asset.

(7) A document of title is not a financial asset unless RCW 62A.8-102(1)(i)(iii) applies.

**Sec. 1403.** RCW 62A.8-103 and 2011 c 74 s 706 are each amended to read as follows:

RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102, is not a security or a financial asset.

(7) A document of title is not a financial asset unless RCW 62A.8-102(1)(i)(iii) applies.

**PART XV  
AMENDMENTS TO UNIFORM COMMERCIAL CODE  
ARTICLE 9A**

**Sec. 1501.** RCW 62A.9A-102 and 2001 c 32 s 16 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (a) **Article 9A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include ~~((A))~~ (i) charters or other contracts involving the use or hire of a vessel or ~~((B))~~ (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which ~~((A))~~ (i) an individual incurs a consumer obligation, ~~((B))~~ (ii) a security interest secures the obligation, and ~~((C))~~ (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

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(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201~~((2))~~ (b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) ("Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes ~~((A))~~ (i) fixtures, ~~((B))~~ (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, ~~((C))~~ (iii) the unborn young of animals, ~~((D))~~ (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and ~~((E))~~ (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated

with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include ~~((A))~~ (i) investment property, ~~((B))~~ (ii) letters of credit, ~~((C))~~ (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, ~~((D))~~ (iv) writings that do not contain a promise or order to pay, or ~~((E))~~ (v) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means ~~((A))~~ (i) money, ~~((B))~~ (ii) money's worth in property, services, or new credit, or ~~((C))~~ (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, ~~((A))~~ (i) owes payment or other performance of the obligation, ~~((B))~~ (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or ~~((C))~~ (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in (63)(A) of this subsection;

(D) The spouse of an individual described in (63)(A), (B), or (C) of this subsection; or

(E) An individual who is related by blood or marriage to an individual described in (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to

accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under (A) of this subsection.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

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(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** "Control" as provided in RCW 62A.7-106 and the following definitions in other articles apply to this Article:

"Applicant."	RCW 62A.5-102.
"Beneficiary."	RCW 62A.5-102.
"Broker."	RCW 62A.8-102.
"Certificated security."	RCW 62A.8-102.
"Check."	RCW 62A.3-104.
"Clearing corporation."	RCW 62A.8-102.
"Contract for sale."	RCW 62A.2-106.
"Customer."	RCW 62A.4-104.
"Entitlement holder."	RCW 62A.8-102.
"Financial asset."	RCW 62A.8-102.
"Holder in due course."	RCW 62A.3-302.
"Issuer" with respect to documents of title.	RCW 62A.7-102.
"Issuer" with respect to a letter of credit or letter-of-credit right.	RCW 62A.5-102.
"Issuer" with respect to a security.	RCW 62A.8-201.
"Lease."	RCW 62A.2A-103.
"Lease agreement."	RCW 62A.2A-103.
"Lease contract."	RCW 62A.2A-103.
"Leasehold interest."	RCW 62A.2A-103.
"Lessee."	RCW 62A.2A-103.
"Lessee in ordinary course of business."	RCW 62A.2A-103.
"Lessor."	RCW 62A.2A-103.
"Lessor's residual interest."	RCW 62A.2A-103.

"Letter of credit."	RCW 62A.5-102.
"Merchant."	RCW 62A.2-104.
"Negotiable instrument."	RCW 62A.3-104.
"Nominated person."	RCW 62A.5-102.
"Note."	RCW 62A.3-104.
"Proceeds of a letter of credit."	RCW 62A.5-114.
"Prove."	RCW 62A.3-103.
"Sale."	RCW 62A.2-106.
"Securities account."	RCW 62A.8-501.
"Securities intermediary."	RCW 62A.8-102.
"Security."	RCW 62A.8-102.
"Security certificate."	RCW 62A.8-102.
"Security entitlement."	RCW 62A.8-102.
"Uncertificated security."	RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 1502.** RCW 62A.9A-102 and 2011 c 74 s 101 are each amended to read as follows:

**DEFINITIONS AND INDEX OF DEFINITIONS.** (a) **Article 9A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include ~~((A))~~ (i) charters or other contracts involving the use or hire of a vessel or ~~((B))~~ (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

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(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which ~~((A))~~ (i) an individual incurs a consumer obligation, ~~((B))~~ (ii) a security interest secures the obligation, and ~~((C))~~ (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201~~((a))~~ (b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) ("Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.) [Reserved.]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes ~~((A))~~ (i) fixtures, ~~((B))~~ (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, ~~((C))~~ (iii) the unborn young of animals, ~~((D))~~ (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and ~~((E))~~ (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include ~~((A))~~ (i) investment property, ~~((B))~~ (ii) letters of credit, ~~((C))~~ (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, ~~((D))~~ (iv) writings that do not contain a promise or order to pay, or ~~((E))~~ (v) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means ~~((A))~~ (i) money, ~~((B))~~ (ii) money's worth in property, services, or new credit, or ~~((C))~~ (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, ~~((A))~~ (i) owes payment or other performance of the obligation, ~~((B))~~ (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or ~~((C))~~ (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse or state registered domestic partner of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse or state registered domestic partner; or

(D) Any other relative, by blood or by marriage or other law, of the individual or the individual's spouse or state registered domestic partner who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in (63)(A) of this subsection;

(D) The spouse or state registered domestic partner of an individual described in (63)(A), (B), or (C) of this subsection; or

(E) An individual who is related by blood or by marriage or other law to an individual described in (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

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(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under (75)(A) of this subsection.

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** "Control" as provided in RCW 62A.7-106 and the following definitions in other articles apply to this Article:

"Applicant."	RCW 62A.5-102.
"Beneficiary."	RCW 62A.5-102.
"Broker."	RCW 62A.8-102.
"Certificated security."	RCW 62A.8-102.
"Check."	RCW 62A.3-104.
"Clearing corporation."	RCW 62A.8-102.
"Contract for sale."	RCW 62A.2-106.
"Customer."	RCW 62A.4-104.
"Entitlement holder."	RCW 62A.8-102.
"Financial asset."	RCW 62A.8-102.
"Holder in due course."	RCW 62A.3-302.
<u>"Issuer" with respect to documents of title.</u>	<u>RCW 62A.7-102.</u>
"Issuer" with respect to a letter of credit or letter-of-credit right.	RCW 62A.5-102.
"Issuer" with respect to a security.	RCW 62A.8-201.
"Lease."	RCW 62A.2A-103.
"Lease agreement."	RCW 62A.2A-103.
"Lease contract."	RCW 62A.2A-103.
"Leasehold interest."	RCW 62A.2A-103.
"Lessee."	RCW 62A.2A-103.
"Lessee in ordinary course of business."	RCW 62A.2A-103.
"Lessor."	RCW 62A.2A-103.
"Lessor's residual interest."	RCW 62A.2A-103.
"Letter of credit."	RCW 62A.5-102.
"Merchant."	RCW 62A.2-104.
"Negotiable instrument."	RCW 62A.3-104.
"Nominated person."	RCW 62A.5-102.
"Note."	RCW 62A.3-104.
"Proceeds of a letter of credit."	RCW 62A.5-114.
"Prove."	RCW 62A.3-103.

"Sale."	RCW 62A.2-106.
"Securities account."	RCW 62A.8-501.
"Securities intermediary."	RCW 62A.8-102.
"Security."	RCW 62A.8-102.
"Security certificate."	RCW 62A.8-102.
"Security entitlement."	RCW 62A.8-102.
"Uncertificated security."	RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 1503.** RCW 62A.9A-203 and 2000 c 250 s 9A-203 are each amended to read as follows:

**ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.** (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, ((☞)) letter-of-credit rights, or electronic documents, and the secured party has control under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) of this section is subject to RCW 62A.4-210 on the security interest of a collecting bank, RCW 62A.5-118 on the security interest of a letter-of-credit issuer or nominated person, RCW 62A.9A-110 on a security interest arising under Article 2 or 2A, and RCW 62A.9A-206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by RCW 62A.9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

**Sec. 1504.** RCW 62A.9A-207 and 2000 c 250 s 9A-207 are each amended to read as follows:

**RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL.** (a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) **Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) **Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignee:

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(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

**Sec. 1505.** RCW 62A.9A-208 and 2001 c 32 s 21 are each amended to read as follows:

**ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL.** (a) **Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under RCW 62A.9A-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under RCW 62A.9A-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under RCW 62A.9A-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under RCW 62A.8-106(4)(b) or 62A.9A-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~((and))~~

(5) A secured party having control of a letter-of-credit right under RCW 62A.9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian

from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

**Sec. 1506.** RCW 62A.9A-301 and 2001 c 32 s 22 are each amended to read as follows:

**LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS.** Except as otherwise provided in RCW 62A.9A-303 through 62A.9A-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4) of this section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

**Sec. 1507.** RCW 62A.9A-310 and 2000 c 250 s 9A-310 are each amended to read as follows:

**WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.** (a) **General rule: Perfection by filing.** Except as otherwise provided in subsections (b) and (d) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

(2) That is perfected under RCW 62A.9A-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311(a);

(4) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under RCW 62A.9A-312 (e), (f), or (g);

(6) In collateral in the secured party's possession under RCW 62A.9A-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

(9) In proceeds which is perfected under RCW 62A.9A-315; or

(10) That is perfected under RCW 62A.9A-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(d) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3).

**Sec. 1508.** RCW 62A.9A-310 and 2011 c 74 s 709 are each amended to read as follows:

WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY. (a) **General rule: Perfection by filing.** Except as otherwise provided in subsections (b) and (d) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

(2) That is perfected under RCW 62A.9A-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311(a);

(4) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under RCW 62A.9A-312 (e), (f), or (g);

(6) In collateral in the secured party's possession under RCW 62A.9A-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

(9) In proceeds which is perfected under RCW 62A.9A-315; or

(10) That is perfected under RCW 62A.9A-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(d) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3).

**Sec. 1509.** RCW 62A.9A-312 and 2000 c 250 s 9A-312 are each amended to read as follows:

PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in RCW 62A.9A-315 (c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under RCW 62A.9A-314;

(2) And except as otherwise provided in RCW 62A.9A-308(d), a security interest in a letter-of-credit right may be perfected only by control under RCW 62A.9A-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under RCW 62A.9A-313.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) **Temporary perfection: New value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) **Temporary perfection: Goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection: Delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) **Expiration of temporary perfection.** After the twenty-day period specified in subsection (e), (f), or (g) of this section expires, perfection depends upon compliance with this Article.

**Sec. 1510.** RCW 62A.9A-313 and 2001 c 32 s 26 are each amended to read as follows:

WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. (a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h) of this section; no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

**Sec. 1511.** RCW 62A.9A-313 and 2011 c 74 s 710 are each amended to read as follows:

WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. (a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h) of this section; no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

**Sec. 1512.** RCW 62A.9A-314 and 2000 c 250 s 9A-314 are each amended to read as follows:

PERFECTION BY CONTROL. (a) **Perfection by control.** A security interest in investment property, deposit accounts, letter-of-credit rights, ~~((e))~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under RCW

62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107.

(b) **Specified collateral: Time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, ((~~or~~)) letter-of-credit rights, or electronic documents is perfected by control under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, or 62A.9A-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) **Investment property: Time of perfection by control; continuation of perfection.** A security interest in investment property is perfected by control under RCW 62A.9A-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

**Sec. 1513.** RCW 62A.9A-317 and 2001 c 32 s 27 are each amended to read as follows:

INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.

(a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

**Sec. 1514.** RCW 62A.9A-317 and 2011 c 74 s 204 are each amended to read as follows:

INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.

(a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and  
(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

**Sec. 1515.** RCW 62A.9A-338 and 2000 c 250 s 9A-338 are each amended to read as follows:

PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

**Sec. 1516.** RCW 62A.9A-338 and 2011 c 74 s 715 are each amended to read as follows:

PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent

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that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

**Sec. 1517.** RCW 62A.9A-601 and 2000 c 250 s 9A-601 are each amended to read as follows:

RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(h) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or 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, are subject to RCW 62A.9A-408 to the extent applicable.

**Sec. 1518.** RCW 62A.9A-601 and 2011 c 74 s 722 are each amended to read as follows:

RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(h) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or 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, are subject to RCW 62A.9A-408 to the extent applicable.

**PART XVI  
STATUTORY REPEALS**

NEW SECTION. **Sec. 1601.** The following acts or parts of acts are each repealed:

(1) RCW 62A.1-109 (Section captions) and 1965 ex.s. c 157 s 1-109;

(2) RCW 62A.1-207 (Performance or acceptance under reservation of rights) and 1993 c 229 s 2 & 1965 ex.s. c 157 s 1-207;

(3) RCW 62A.1-208 (Option to accelerate at will) and 1965 ex.s. c 157 s 1-208;

(4) RCW 62A.2-208 (Course of performance or practical construction) and 1965 ex.s. c 157 s 2-208;

(5) RCW 62A.2A-207 (Course of performance or practical construction) and 1993 c 230 s 2A-207;

(6) RCW 62A.10-104 (Laws not repealed) and 1995 c 48 s 71 & 1965 ex.s. c 157 s 10-104; and

(7) 2011 c 74 s 801.

**PART XVII  
CONFORMING AMENDMENTS TO UCC NUMBERING  
SYSTEM FOR ARTICLE 5**

**Sec. 1701.** RCW 62A.5-102 and 1997 c 56 s 3 are each amended to read as follows:

((+)) (a) The definitions in this section apply throughout this Article unless the context clearly requires otherwise:

((+)) (1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

((+)) (2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

((+)) (3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

((+)) (4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

((+)) (5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

((+)) (6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in RCW 62A.5-108((+)) (e) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

((+)) (7) "Good faith" means honesty in fact in the conduct or transaction concerned.

((+)) (8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) Upon payment;

(ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

((+)) (9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

((+)) (10) "Letter of credit" means a definite undertaking that satisfies the requirements of RCW 62A.5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

((+)) (11) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

((+)) (12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

((+)) (13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

((+)) (14) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

((+)) (15) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

((+)) (b) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance" RCW 62A.3-409

"Value" RCW 62A.3-303, RCW 62A.4-211.

((+)) (c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article.

**Sec. 1702.** RCW 62A.5-104 and 1997 c 56 s 5 are each amended to read as follows:

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated ((+)) (i) by a signature or ((+)) (ii) in accordance with the agreement of the parties or the standard practice referred to in RCW 62A.5-108((+)) (e).

**Sec. 1703.** RCW 62A.5-106 and 1997 c 56 s 7 are each amended to read as follows:

((+)) (a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

((+)) (b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

((+)) (c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

((+)) (d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

**Sec. 1704.** RCW 62A.5-107 and 1997 c 56 s 8 are each amended to read as follows:

((+)) (a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

((+)) (b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

((+)) (c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

((+)) (d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection ((+)) (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

**Sec. 1705.** RCW 62A.5-108 and 1997 c 56 s 9 are each amended to read as follows:

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~~((+))~~ (a) Except as otherwise provided in RCW 62A.5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection ~~((5))~~ (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in RCW 62A.5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

~~((2))~~ (b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

~~((+))~~ (1) To honor;

~~((b))~~ (2) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

~~((+))~~ (3) To give notice to the presenter of discrepancies in the presentation.

~~((3))~~ (c) Except as otherwise provided in subsection ~~((4))~~ (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

~~((4))~~ (d) Failure to give the notice specified in subsection ~~((2))~~ (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in RCW 62A.5-109~~((+))~~ (a) or expiration of the letter of credit before presentation.

~~((5))~~ (e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

~~((6))~~ (f) An issuer is not responsible for:

~~((+))~~ (1) The performance or nonperformance of the underlying contract, arrangement, or transaction;

~~((b))~~ (2) An act or omission of others; or

~~((+))~~ (3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection ~~((5))~~ (e) of this section.

~~((7))~~ (g) If an undertaking constituting a letter of credit under RCW 62A.5-102~~((+)(j))~~ (a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

~~((8))~~ (h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

~~((9))~~ (i) An issuer that has honored a presentation as permitted or required by this Article:

~~((+))~~ (1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

~~((b))~~ (2) Takes the documents free of claims of the beneficiary or presenter;

~~((+))~~ (3) Is precluded from asserting a right of recourse on a draft under RCW 62A.3-414 and 62A.3-415;

~~((4))~~ (4) Except as otherwise provided in RCW 62A.5-110 and 62A.5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

~~((+))~~ (5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

**Sec. 1706.** RCW 62A.5-109 and 1997 c 56 s 10 are each amended to read as follows:

~~((+))~~ (a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of

credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

~~((+))~~ (1) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

~~((b))~~ (2) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

~~((2))~~ (b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

~~((+))~~ (1) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

~~((b))~~ (2) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

~~((+))~~ (3) All of the conditions to entitle a person to the relief under the law of this state have been met; and

~~((+))~~ (4) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection ~~((+)(+))~~ (a)(1) of this section.

**Sec. 1707.** RCW 62A.5-110 and 1997 c 56 s 11 are each amended to read as follows:

~~((+))~~ (a) If its presentation is honored, the beneficiary warrants:

~~((+))~~ (1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in RCW 62A.5-109~~((+))~~ (a); and

~~((b))~~ (2) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

~~((2))~~ (b) The warranties in subsection ~~((+))~~ (a) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those articles.

**Sec. 1708.** RCW 62A.5-111 and 1997 c 56 s 12 are each amended to read as follows:

~~((+))~~ (a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

~~((2))~~ (b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

~~((3))~~ (c) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection ~~((1) or (2))~~ (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections ~~((1) and (2))~~ (a) and (b) of this section.

~~((4))~~ (d) An issuer, nominated person, or adviser who is found liable under subsection ~~((1), (2), or (3))~~ (a), (b), or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

~~((5))~~ (e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

~~((6))~~ (f) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

**Sec. 1709.** RCW 62A.5-112 and 1997 c 56 s 13 are each amended to read as follows:

~~((1))~~ (a) Except as otherwise provided in RCW 62A.5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

~~((2))~~ (b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

~~((a))~~ (1) The transfer would violate applicable law; or

~~((b))~~ (2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in RCW 62A.5-108(5) or is otherwise reasonable under the circumstances.

**Sec. 1710.** RCW 62A.5-113 and 1997 c 56 s 14 are each amended to read as follows:

~~((1))~~ (a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

~~((2))~~ (b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection ~~((5))~~ (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in RCW 62A.5-108~~((5))~~ (e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

~~((3))~~ (c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

~~((4))~~ (d) Honor of a purported successor's apparently complying presentation under subsection ~~((1) or (2))~~ (a) or (b) of this section has the consequences specified in RCW 62A.5-108~~((9))~~ (i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the

beneficiary nor the successor of the beneficiary are forged documents for the purposes of RCW 62A.5-109.

~~((5))~~ (e) An issuer whose rights of reimbursement are not covered by subsection ~~((4))~~ (d) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection ~~((2))~~ (b) of this section.

~~((6))~~ (f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

**Sec. 1711.** RCW 62A.5-114 and 1997 c 56 s 15 are each amended to read as follows:

~~((1))~~ (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

~~((2))~~ (b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

~~((3))~~ (c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

~~((4))~~ (d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

~~((5))~~ (e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

~~((6))~~ (f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9A or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9A or other law.

**Sec. 1712.** RCW 62A.5-116 and 1997 c 56 s 17 are each amended to read as follows:

~~((1))~~ (a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in RCW 62A.5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

~~((2))~~ (b) Unless subsection ~~((1))~~ (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a

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bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

~~((3))~~ (c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If ~~((4))~~ (i) this Article would govern the liability of an issuer, nominated person, or adviser under subsection ~~((1) or (2))~~ (a) or (b) of this section, ~~((4))~~ (ii) the relevant undertaking incorporates rules of custom or practice, and ~~((4))~~ (iii) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in RCW 62A.5-103~~((3))~~ (c).

~~((4))~~ (d) If there is conflict between this Article and Article 3, 4, 4A, or 9A, this Article governs.

~~((5))~~ (e) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection ~~((4))~~ (a) of this section.

**Sec. 1713.** RCW 62A.5-117 and 1997 c 56 s 18 are each amended to read as follows:

~~((4))~~ (a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

~~((2))~~ (b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection ~~((4))~~ (a) of this section.

~~((3))~~ (c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

~~((4))~~ (1) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

~~((4))~~ (2) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

~~((4))~~ (3) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

~~((4))~~ (d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections ~~((1) and (2))~~ (a) and (b) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection ~~((3))~~ (c) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

**Sec. 1714.** RCW 62A.5-118 and 2000 c 250 s 2 are each amended to read as follows:

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Article 9A, but:

(1) A security agreement is not necessary to make the security interest enforceable under RCW 62A.9A-203~~((4)(3))~~ (2)(c);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

**Sec. 1715.** RCW 62A.2-512 and 1997 c 56 s 20 are each amended to read as follows:

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-109~~((2))~~ (b)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies.

**Sec. 1716.** RCW 62A.9A-107 and 2001 c 32 s 19 are each amended to read as follows:

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under RCW 62A.5-114~~((3))~~ (c) or otherwise applicable law or practice.

## PART XVIII

### ADMINISTRATIVE DRAFTING PROVISIONS

**NEW SECTION. Sec. 1801.** Sections 115 through 124 of this act must be placed in chapter 62A.1 RCW under the heading:

#### PART 3

#### TERRITORIAL APPLICABILITY AND GENERAL RULES

**NEW SECTION. Sec. 1802.** PART HEADINGS. Part headings used in this act are not any part of the law.

**NEW SECTION. Sec. 1803.** APPLICABILITY. This act applies to a transaction that is entered into, a document of title that is issued, or a bailment that arises on or after the effective date of this section. This act does not apply to a transaction that is entered into, a document of title that is issued, or a bailment that arises before the effective date of this section even if the transaction, document of title, or bailment would be subject to this act if the transaction had been entered into, the document of title had been issued, or the bailment had arisen on or after the effective date of this section. This act does not apply to a right of action that has accrued before the effective date of this section.

**NEW SECTION. Sec. 1804.** SAVINGS CLAUSE. A transaction that is entered into, a document of title that is issued, or a bailment that arises before the effective date of this section and the rights, obligations, and interests flowing from that transaction, document, or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

**NEW SECTION. Sec. 1805.** Sections 901, 1402, 1501, 1507, 1510, 1513, 1515, and 1517 of this act expire July 1, 2013.

**NEW SECTION. Sec. 1806.** Sections 902, 1403, 1502, 1508, 1511, 1514, 1516, and 1518 of this act take effect July 1, 2013."

Senator Kline spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary to Engrossed Substitute House Bill No. 2197.

The motion by Senator Kline carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "Code;" strike the remainder of the title and insert "amending RCW 62A.1-101, 62A.1-102, 62A.1-103, 62A.1-104, 62A.1-105, 62A.1-106, 62A.1-107, 62A.1-108, 62A.1-201, 62A.1-202, 62A.1-203, 62A.1-204, 62A.1-205, 62A.1-206, 62A.7-101, 62A.7-102, 62A.7-103, 62A.7-104, 62A.7-105, 62A.7-201, 62A.7-202, 62A.7-203, 62A.7-204, 62A.7-205, 62A.7-206, 62A.7-207, 62A.7-208, 62A.7-209, 62A.7-210, 62A.7-301, 62A.7-302, 62A.7-303, 62A.7-304, 62A.7-305, 62A.7-307, 62A.7-308, 62A.7-309, 62A.7-401, 62A.7-402, 62A.7-403, 62A.7-404, 62A.7-501, 62A.7-502, 62A.7-503, 62A.7-504, 62A.7-505, 62A.7-506, 62A.7-507, 62A.7-508, 62A.7-509, 62A.7-601, 62A.7-602, 62A.7-603, 62A.2-103, 62A.2-104, 62A.2-202, 62A.2-310, 62A.2-323, 62A.2-401, 62A.2-503, 62A.2-505, 62A.2-506, 62A.2-509, 62A.2-605, 62A.2-705, 62A.2A-103, 62A.2A-103, 62A.2A-501, 62A.2A-514, 62A.2A-518, 62A.2A-519, 62A.2A-526, 62A.2A-527, 62A.2A-528, 62A.3-103, 62A.4-104, 62A.4-210, 62A.4A-105, 62A.4A-106, 62A.4A-204, 62A.5-103, 62A.8-102, 62A.8-103, 62A.8-103, 62A.9A-102, 62A.9A-102, 62A.9A-203, 62A.9A-207, 62A.9A-208, 62A.9A-301, 62A.9A-310, 62A.9A-310, 62A.9A-312, 62A.9A-313, 62A.9A-313, 62A.9A-314, 62A.9A-317, 62A.9A-317, 62A.9A-338, 62A.9A-338, 62A.9A-601, 62A.9A-601, 62A.5-102, 62A.5-104, 62A.5-106, 62A.5-107, 62A.5-108, 62A.5-109, 62A.5-110, 62A.5-111, 62A.5-112, 62A.5-113, 62A.5-114, 62A.5-116, 62A.5-117, 62A.5-118, 62A.2-512, and 62A.9A-107; adding new sections to chapter 62A.1 RCW; adding a new section to chapter 62A.7 RCW; creating new sections; repealing RCW 62A.1-109, 62A.1-207, 62A.1-208, 62A.2-208, 62A.2A-207, and 62A.10-104; repealing 2011 c 74 s 801; providing an effective date; and providing an expiration date."

#### MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 2197 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2197 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2197 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser,

Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Padden, Parlette, Pflug, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Morton

Excused: Senator Prentice

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2197 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED HOUSE BILL NO. 2469, by Representatives Uthegrove, Angel, Takko and Asay

Regarding boatyard storm water treatment systems.

The measure was read the second time.

#### MOTION

Senator Nelson moved that the following committee striking amendment by the Committee on Environment be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 90.58.355 and 1994 c 257 s 20 are each amended to read as follows:

~~((The procedural requirements of this chapter))~~ Requirements to obtain a substantial development permit, conditional use permit, or variance shall not apply to any person:

(1) Conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department (~~of ecology shall~~) must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090; or

(2) Installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities."

Senator Nelson spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Environment to Engrossed House Bill No. 2469.

The motion by Senator Nelson carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "systems;" strike the remainder of the title and insert "and amending RCW 90.58.355."

#### MOTION

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On motion of Senator Nelson, the rules were suspended, Engrossed House Bill No. 2469 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Nelson and Ericksen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2469 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2469 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

ENGROSSED HOUSE BILL NO. 2469 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2614, by House Committee on Judiciary (originally sponsored by Representatives Kenney, Ryu, Hasegawa and Santos)

Limiting deficiency judgments pertaining to residual debts following short sales of owner-occupied residential property secured by deeds of trust.

The measure was read the second time.

MOTION

Senator Frockt moved that the following committee striking amendment by the Committee on Financial Institutions, Housing & Insurance be not adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 64.04 RCW to read as follows:

(1) If the beneficiary or mortgagee, and its assignees, of debt secured by owner-occupied real property releases its deed of trust or mortgage in the real property for less than full payment of the secured debt and if the beneficiary or mortgagee, and its assignees, reserves the right to pursue collection of the remaining debt, the beneficiary or mortgagee, and its assignees, shall provide written notice to the debtor the first time that the beneficiary or mortgagee, and its assignees, provides notice to the debtor that the beneficiary or mortgagee, and its assignees, intends to release its security in the real property for less than full payment. The written notice to the debtor must be substantially in the following form:

"To: [Name of debtor] DATE:

Please take note that [name of beneficiary or mortgagee, and its assignees], in releasing its security interest in this owner-occupied real property, reserves the right to collect that amount that constitutes less than full payment of the secured debt. The amount of debt outstanding as of the date of this letter is \$ . . . . . However, nothing in this letter precludes the debtor from negotiating with the [name of beneficiary or mortgagee, and its assignees] for a full release of this outstanding debt.

If [name of beneficiary or mortgagee, and its assignees] does not initiate a court action to collect the outstanding debt within three years on the date which it released its security interest, the right to collect the outstanding debt is forfeited."

(2)(a) If the beneficiary or mortgagee, and its assignees, of debt secured by owner-occupied real property reserves the right to pursue collection of the outstanding debt, in accordance with subsection (1) of this section, it must initiate a court action to collect the remaining debt within three years from the date on which it released its deed of trust or mortgage in the owner-occupied real property or else it forfeits any right to collect the remaining debt.

(b) If the beneficiary or mortgagee, and its assignees, of debt secured by owner-occupied real property fails to provide the notice in accordance with subsection (1) of this section, the beneficiary or mortgagee, and its assignees, of debt secured by owner-occupied real property must initiate a court action to collect the remaining debt within three years of the date on which it released its security interest in the real property for less than full payment or else it forfeits any right to collect the remaining debt.

(3) This section applies only to debts incurred by individuals primarily for personal, family, or household purposes. This section does not apply to debts for business, commercial, or agricultural purposes.

(4) For the purposes of this section, "owner-occupied real property" means real property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit that is the principle residence of the debtor."

On page 1, line 2 of the title, after "property" strike the remainder of the title and insert "; and adding a new section to chapter 64.04 RCW."

The President declared the question before the Senate to be the motion by Senator Frockt to not adopt the committee striking amendment by the Committee on Financial Institutions, Housing & Insurance to Engrossed Substitute House Bill No. 2614.

The motion by Senator Frockt carried and the committee striking amendment was not adopted by voice vote.

MOTION

Senator Frockt moved that the following striking amendment by Senator Frockt and others be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 64.04 RCW to read as follows:

(1) If the beneficiary or mortgagee, or its assignees, of debt secured by owner-occupied real property intends to release its deed of trust or mortgage in the real property for less than full payment of the secured debt, it shall provide upon its first written notice to the borrower the following information in substantially the following form:

"To: [Name of borrower] DATE:

Please take note that [name of beneficiary or mortgagee, or its assignees], in releasing its security interest in this owner-occupied real property, [waives or reserves] the right to collect that amount that constitutes full payment of the secured debt. The amount of

debt outstanding as of the date of this letter is \$. . . . . However, nothing in this letter precludes the borrower from negotiating with the [name of beneficiary or mortgagee, or its assignees] for a full release of this outstanding debt.

If [name of beneficiary or mortgagee, or its assignees] does not initiate a court action to collect the outstanding debt within three years on the date which it released its security interest, the right to collect the outstanding debt is forfeited."

(2) If the beneficiary or mortgagee, or its assignees, of debt secured by owner-occupied real property intends to pursue collection of the outstanding debt, it must initiate a court action to collect the remaining debt within three years from the date on which it released its deed of trust or mortgage in the owner-occupied real property or else it forfeits any right to collect the remaining debt.

(3) This section applies only to debts incurred by individuals primarily for personal, family, or household purposes. This section does not apply to debts for business, commercial, or agricultural purposes.

(4) For the purposes of this section, "owner-occupied real property" means real property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower.

**Sec. 2.** RCW 18.86.120 and 1997 c 217 s 7 are each amended to read as follows:

(1) The pamphlet required under RCW 18.86.030(1)(f) shall consist of the entire text of RCW 18.86.010 through 18.86.030 and 18.86.040 through 18.86.110 with a separate cover page. The pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in print no smaller than 10-point type, the cover page shall be in print no smaller than 12-point type, and the title of the cover page "The Law of Real Estate Agency" shall be in print no smaller than 18-point type. The cover page shall be in the following form:

### **The Law of Real Estate Agency**

This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.

The following is only a brief summary of the attached law:

Sec. 1. Definitions. Defines the specific terms used in the law.

Sec. 2. Relationships between Licensees and the Public. States that a licensee who works with a buyer or tenant represents that buyer or tenant--unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client--unless the parties agree in writing that both licensees are dual agents.

Sec. 3. Duties of a Licensee Generally. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure

of the licensee's agency relationship in a specific transaction.

Sec. 4. Duties of a Seller's Agent. Prescribes the additional duties of a licensee representing the seller or landlord only.

Sec. 5. Duties of a Buyer's Agent. Prescribes the additional duties of a licensee representing the buyer or tenant only.

Sec. 6. Duties of a Dual Agent. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

Sec. 7. Duration of Agency Relationship. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

Sec. 8. Compensation. Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

Sec. 9. Vicarious Liability. Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

Sec. 10. Imputed Knowledge and Notice. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Sec. 11. Interpretation. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

(2)(a) The pamphlet required under RCW 18.86.030(1)(f) must also include the following disclosure: When the seller of owner-occupied residential real property enters into a listing agreement with a real estate licensee where the proceeds from the sale may be insufficient to cover the costs at closing, it is the responsibility of the real estate licensee to disclose to the seller in writing that the decision by any beneficiary or mortgagee, or its assignees, to release its interest in the real property, for less than the amount the borrower owes, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including fees such as the real estate licensee's commission.

(b) For the purposes of this subsection, "owner-occupied real property" means real property consisting solely of a single-family

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residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower.

**Sec. 3.** RCW 4.16.040 and 2007 c 124 s 1 are each amended to read as follows:

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement, except as provided for in section 1(2) of this act.

(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate."

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Frockt and others to Engrossed Substitute House Bill No. 2614.

The motion by Senator Frockt carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "property" strike the remainder of the title and insert "; amending RCW 18.86.120 and 4.16.040; and adding a new section to chapter 64.04 RCW."

MOTION

On motion of Senator Frockt, the rules were suspended, Engrossed Substitute House Bill No. 2614 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Frockt and Benton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2614 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2614 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Holmquist Newbry

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2614 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 9:05 p.m., on motion of Senator Eide, the Senate adjourned until 9:30 a.m. Thursday, March 1, 2012.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate



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2354-S		2617-S
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Third Reading Final Passage.....53		Third Reading Final Passage.....3
2373-S2		2657-S
		Second Reading.....62

Third Reading Final Passage .....	62	Messages .....	1
2664-S		President Signed.....	17
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Third Reading Final Passage .....	2	Messages .....	1
2692-S		President Signed.....	17
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6133		MARK RICHARD	
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6175		Intro. Special Guest, Representatives of the Brigadoon	
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6385			